

THE ACUPUNCTURE BOARD

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 2002 SUNSET REVIEW REPORT

Four Year Overview of the Board's Regulatory Program, Board's Response to Issues and Recommendations from Previous Sunset Review, Background Paper for the 2001 Public Hearing, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs

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1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM OF THE ACUPUNCTURE BOARD

BACKGROUND AND DESCRIPTION OF THE BOARD

History of the Board

Before acupuncture became regulated in California acupuncturists were arrested and prosecuted for engaging in the unlicensed practice of medicine. Acupuncturists and their patients organized and sought regulation to make the practice of acupuncture by acupuncturists legal.

The Board of Medical Examiners (now called the Medical Board of California) began regulating acupuncture in 1972 under provisions which authorized the practice of acupuncture under the supervision of a licensed physician as part of acupuncture research in medical schools. Subsequently, the law was amended to allow acupuncture research to be conducted under the auspices of medical schools rather than just in medical schools.

In 1975, Senate Bill 86 (Chapter 267, Statutes of 1975) created the Acupuncture Advisory Committee (committee) under the Board of Medical Examiners and allowed the practice of acupuncture but only upon prior diagnosis or referral by a licensed physician, chiropractor or dentist. In 1976 California became the eighth state to license acupuncturists. Subsequent legislation in 1978 established acupuncture as a "primary health care profession" by eliminating the requirement for prior diagnosis or referral by a licensed physician, chiropractor or dentist; and Assembly Bill 2424 (Chapter 1398, Statutes of 1978) authorized Medi-Cal payments for acupuncture treatment.

In 1980 the law was amended to: abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions with limited autonomous authority; expanded the acupuncturists' scope of practice to include electroacupuncture, cupping, and moxibustion; clarified that oriental massage, exercise and herbs for nutrition were within the acupuncturist's authorized scope of practice; and provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the Medical

Board's fund. Most of these statutory changes became effective on January 1, 1982.

In 1982, the Legislature designated the Acupuncture Examining Committee as an autonomous body, and effective January 1, 1990, through AB 2367 (Chapter 1249, Statutes of 1989) the name was changed to the Acupuncture Committee to better identify it as a state licensing entity for acupuncturists. On January 1, 1999, the committee's name was changed to the Acupuncture Board (SB 1980, Chapter 991, Statutes of 1998) and removed the Committee from within the jurisdiction of the medical Board of California (SB 1981, Chapter 736, Statutes of 1998).

Function of the Board

The Acupuncture Board's (Board) legal mandate is to regulate the practice of acupuncture in the State of California. The Board established and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license. The Acupuncture Licensure Act commences with Business and Professions (B & P) Code, Section 4925 et seq. The Board's regulations appear in Title 16, Division 13.7, of the California Code of Regulations (CCR).

The mission of the Acupuncture Board is to protect and educate the public through appropriate regulation of licensure, education standards, and enforcement of the Acupuncture Licensure Act.

The vision of the Acupuncture Board is to remain committed to meet the growing consumer demand for acupuncture and oriental medicine by providing information to the public so they can make informed decisions when choosing acupuncture and oriental medicine as an appropriate first treatment. The Board will continue its leadership to develop and enhance the profession's role as an equal partner with all other primary health care professions.

The primary responsibility of the Acupuncture Board is to protect California consumers from incompetent, unethical and/or unlicensed practice through the enforcement of the Acupuncture Licensure Act and the Board's regulations. The Board promotes safe practice through the improvement of educational training standards, continuing education, enforcement of the B & P Code, and public outreach.

Board Composition

SB 1980 (Chapter 991, Statutes 1998) reduced the Board from 11 members to 9 members. The Board is currently composed of 4 members who are licensed acupuncturists with at least five years of acupuncture experience and not licensed as physicians, one member who is a licensed physician with two years of

acupuncture experience, and 4 public members. The Board has eight appointed members and one professional vacancy. The current Board members are:

	Term Expiration
SHARI ASPLUND , Chair (Public Member) Appointed by Senate Rules Committee, September 1996	July 2002
JOAN CHANG , L.Ac. (Professional Member) Appointed by the Governor, June 2001	June 2003
MIN M. CHANG (Public Member) Appointed by the Speaker of the Assembly, May 2001	July 2004
MICHAEL ENG , Esq. (Public Member) Appointed by the Governor, November 2000	June 2004
GARY KLAPMAN , M.D., L.Ac. (Professional Member) Appointed by the Governor, November 2000	June 2004
HOWARD MOFFET , L.Ac., Vice Chair (Professional Member) Appointed by the Governor, November 2000	June 2003
JUSTIN TIN , D.D.S. (Public Member) Appointed by the Governor, April 2000	June 2003
PEI LI ZHONG-FONG , L.Ac. (Professional Member) Appointed by the Governor, November 2000	June 2004

Committees of the Board

The Acupuncture Board has four committees, which make recommendations to the full Board as follows:

Executive Committee -- issues related to:

- ? expenditures/revenue/fund condition
- ? executive officer selection/evaluation
- ? legislation/regulations
- ? committee policy/procedures
- ? special administrative projects

Education Committee -- issues related to:

- ? acupuncture educational standards
- ? school application and approval process

- ? tutorial programs
- ? continuing education

Examination Committee -- issues related to:

- ? development and administration contracts
- ? administration
- ? miscellaneous issues

Enforcement Committee -- issues related to:

- ? scope of practice
- ? complaints
- ? disciplinary decisions
- ? probation monitoring
- ? reinstatements
- ? miscellaneous issues

Board regulation of the practice and practitioners

The Acupuncture Licensure Act (B & P Code, Section 4925-4979) and its related administrative regulations (Title 16, CCR, Sections 1399.400 et seq.) defines and regulates both the practice of acupuncture and the profession. The Board licenses and regulates acupuncturists, establishes educational standards and approves acupuncture training programs. As part of its licensing function, the Board develops and administers the California Acupuncture Licensing Examination (CALE) biannually.

The practice of acupuncture, as defined in B & P Code Section 4927, involves the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body. Acupuncture includes the techniques of electroacupuncture, cupping and moxibustion.

In California, only those persons who have met the educational and examination requirements and have been issued and possesses a current and valid acupuncturists license are allowed to practice acupuncture. Individuals licensed by the Acupuncture Board use the title of Licensed Acupuncturist (L.Ac.) or Certified Acupuncturist (C.A.).

Exemptions: Physicians licensed by the Medical Board of California are authorized to practice acupuncture within their scope of licensed medical practice. Podiatrists licensed by the California Board of Podiatric Medicine and dentists licensed by the Dental Board of California may also practice acupuncture as part of their respective

licensed practices - if they have completed a course of instruction in acupuncture approved by their respective licensing boards (B & P Code Section 4947).

Major Changes to the Board since the Last Sunset Review

1998

- Secured the Acupuncture Board's autonomy from the Medical Board of California and name change from Committee to Board.
- Through regulations, removed the limitation on hours accredited towards ethics and practice management for continuing education and allow continuing education credits to be awarded on Board approved distance education courses.
- Created a Law Enforcement Task Force to promote cooperation between enforcement agencies and to improve service to the public.
- Through the budget change proposal (BCP) process, secured funding to fully support the enforcement and examination programs and to develop a consumer brochure.

1999

- Elimination of clinical portion of the licensing examination commencing Fall 1999.
- Implemented live-scan fingerprinting for applicants, reducing the waiting period for obtaining a license by approximately 70%.
- Developed, designed and implemented the Board's website.
- Expanded the website to offer license verification capability for licensee name, address and disciplinary status. (Board averages about 2,700 license lookup hits a month).
- Legislative and regulatory amendments completed on the examination and reexamination fee structure to be actual cost to the Board for the development, grading and administering of each examination.
- Evaluated, tested and replaced or modified technical systems to be Y2K ready.
- Promoted and reclassified existing staff, hired new staff and trained staff in each position.
- Secured Language Line with AT&T to accommodate non-English speaking calls to the Board.
- Developed and implemented a Business Continuity Plan.
- Secured authority to hire a permanent enforcement/education office technician.
- Commenced special task force meetings to define competencies and educational outcomes in order to increase educational curriculum requirements for licensure.

2000

- Commenced occupational analysis.

- Five new member appointments made to the Board.
- Secured authority to hire a permanent examination office technician.
- Commenced development and design of a new consumer brochure.

2001

- Concluded occupational analysis.
- Two new member appointments made to the Board.
- Completed and mailed consumer brochure.

Licensing Data

Consumers requesting licensing information are provided the license number, status, date of issue and expiration, address of record, and/or whether any disciplinary action has been filed or taken against the license. This information is also available through license verification on our website.

There are approximately 6,809 licensed acupuncturists through FY 2000/01. The following provides licensing data for the past four years:

TABLE 1

LICENSING DATA FOR ACUPUNCTURE	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Licensed *	Total: 5062	Total: 5443	Total: 5839	Total: 6809
Applications Received	Total: 808	Total: 664	Total: 553	Total: 838
Applications Denied	Total: 0	Total: 1	Total: 1	Total: 0
Licenses Issued	Total: 448	Total: 452	Total: 496	Total: 628
Renewals Issued	Total: 1928	Total: 1643	Total: 2118	Total: 2671
Statement of Issues Filed	Total: 0	Total: 1	Total: 0	Total: 0
Statement of Issues Withdrawn	Total: 0	Total: 0	Total: 0	Total: 0
Licenses Denied	Total: 0	Total: 0	Total: 1	Total: 1

- figures for total licensed does not include licenses which have been cancelled, deceased or revoked.

BUDGET AND STAFF

Current Fee Schedule and Range

The Acupuncture Board has an annual budget of approximately \$ 1,892,000 derived primarily from various fees, such as: license, renewal, school applications, tutorial program, examination and continuing education. The remainder of the Board's revenues are generated from interest and disciplinary cost recovery.

The last fee adjustment by the Board was for examination fees. Effective January 1, 1999, SB 1980 amended B & P Code Section 4970(b), which set the limit for examination fees to be the actual cost for development and writing of, grading, and administering of each examination. Subsequently, regulations were adopted setting the examination fee at \$550.00, which was determined to be the actual cost.

The Board anticipates filing a regulation package to increase our delinquency fee to an amount allowed under B & P Code Section 4970(e), which was amended to set the delinquency fee in accordance with B & P Code Section 163.5 (SB 1980, Chapter 991, Statutes of 1998). Section 163.5 allows for the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs (DCA) to be set at 50% of the renewal fee, with a minimum of \$25.00 and a maximum of \$150.00. CCR Section 1399.460(f) currently defines a \$25.00 delinquency fee.

The following schedule illustrates various revenue sources and fees:

TABLE 2

Fee Schedule	Current Fee	Statutory Limit
Application Fee	\$ 75.00	\$ 75.00
Exam / ReExam Fee	\$ 550.00	Actual cost for development and administration
Original License Fee Initial license fee is prorated, 13 to 24 months, based on the date license is issued and the birthmonth	\$ 325.00	\$ 325.00
Renewal Fee (Biennial)	\$ 325.00	\$ 325.00
Delinquency Fee	\$ 25.00	\$ 150.00
School Application Fee	\$ 1,500.00	\$ 3,000.00
Tutorial Supervisor Application Fee	\$ 200.00	\$ 200.00
Tutorial Supervisor Renewal Fee	\$ 50.00	\$ 50.00
Tutorial Trainee Application Fee	\$ 25.00	\$ 25.00
Tutorial Trainee Renewal Fee	\$ 10.00	\$ 10.00
CE Provider Application Fee	\$ 150.00	\$ 150.00
Duplicate/replacement wall license	\$ 15.00	\$ 15.00
Duplicate/replacement pocket license	\$ 10.00	\$ 10.00
Endorsement Ltrs	\$ 10.00	\$ 10.00

Revenue and Expenditure History

The Board's total revenue, expenditures and fund balance have been fairly stable and consistent over the years. The Board has a biennial renewal system (implemented in 1996) which results in higher revenues being generated in even years. The license fee of \$325.00 biennially is sufficient to maintain program costs and provides an adequate reserve. Approximately 90% of the Board revenues are from fees. The Board is self-funded, supported by fees imposed upon the profession it regulates. The Board draws no monies from taxpayers nor the General Fund.

TABLE 3

REVENUES	ACTUAL				PROJECTED	
	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Licensing/Exam Fees	860,723	1,388,573	1,190,842	1,897,057	1,726,230	1,890,605
Fines & Penalties	4,097	20,883	22,216	16,244		
Fingerprint Reimburse	11,564	52,297	25,512	***392		
External/Private/Grant	2,220	2,246	6,593	9,084		
Interest	87,189	99,990	91,272	122,704	79,472	77,457
Special Deposit Fund		*179,629		**57,391		
TOTALS	965,793	1,743,618	1,336,435	2,102,872	1,805,702	1,968,062

* First Malibu lawsuit repayment

** Final Malibu lawsuit repayment

*** Implementation of Live Scan fingerprint process

EXPENDITURES	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Personnel Services	376,899	404,654	389,781	459,009	516,880	527,218
Operating Expenses	778, 277	924,599	1,312,187	1,161,247	1,329,120	1,355,702
(-) Reimbursements			54,321			
(-) Distributed Costs						
TOTALS	1,155,176	1,329,253	1,647,647	1,620,256	1,846,000	1,882,920

The examination and enforcement program budget allocations were each increased through the BCP process in FY1999/2000 allowing for program costs to be fully covered. The Board's operating expenses were consistent prior to the increase in 1999/2000 and have remained steady.

The Board has 9 full-time permanent and four part-time seasonal positions. The Board has submitted two BCP's for FY 2002/03 for two additional positions.

Expenditures by Program Component

Approximately 23% of the Board's budget is expended for licensing related activities, 40% is expended for examination related expenditures, 29% expended for enforcement and discipline, and 8% expended for general administration.

TABLE 4

EXPENDITURES BY PROGRAM COMPONENT	FY 97-98	FY 98-99	FY 99-00	FY 00-01	Average % Spent by Program
Enforcement	335,001	385,484	477,817	469,874	29%
Examination	462,070	531,701	659,059	648,103	40%
Licensing	265,691	305,728	378,959	372,659	23%
Administrative	92,414	106,340	131,812	129,620	8%
TOTALS	1,155,176	1,329,253	1,647,647	1,620,256	

Fund Condition

The Board's fund condition has remained fairly consistent over the years. There are no mandated statutory reserve levels the Board is required to maintain. The Board has been consistent in maintaining a 9-10 month reserve.

TABLE 5

ANALYSIS OF FUND CONDITION	FY 99-00	FY 00-01	FY 01-02 (Budget Yr)	FY 02-03 (Projected)	FY 03-04 (Projected)	FY 04-05 (Projected)
Total Reserves, July 1	1,720,424	1,354,486	1,589,432	1,549,134	1,634,276	1,521,641
Total Rev. & Transfers	1,282,139	2,014,779	1,805,702	1,968,062	1,807,944	2,007,423
Total Resources	3,002,268	3,369,265	3,395,134	3,517,196	3,442,219	3,529,064
Total Expenditures	1,647,782	1,779,833	1,846,000	1,882,920	1,920,578	1,958,990
Reserve, June 30	1,354,486	1,589,432	1,549,134	1,634,276	1,521,641	1,570,074
MONTHS IN RESERVE	9.9	10.7	10.1	10.4	9.5	9.6

LICENSURE REQUIREMENTS

Education, Experience and Examination Requirements

B & P Code Section 4938 states:

The Board shall issue a license to practice acupuncture to any person who makes an application and meets the following requirements:

- (a) Is at least 18 years of age.
- (b) Furnishes satisfactory evidence of completion of one of the following:
 - (1) An educational and training program approved by the Board pursuant to Section 4939.
 - (2) Satisfactory completion of a tutorial program in the practice of an acupuncturist which is approved by the Board.
 - (3) In the case of an applicant who has completed education and training outside the United States and Canada, documented educational training and clinical experience which meets the standards established pursuant to Sections 4939 and 4941.
- (c) Passes a written examination administered by the Board that tests the applicant's ability, competency, and knowledge in the practice of an acupuncturist. The written examination shall be developed by the Office of Examination Resources of the Department of Consumer Affairs.
- (d) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

Pursuant to the above, subsection (b)(1) involves graduation from an approved acupuncture school or college with a specified minimum curriculum of 2,348 hours (1,548 didactic/theoretical training and 800 hours supervised clinical training). Subsection (b)(2) involves 2,850 hours (2,250 hours clinical training and 600 hours theoretical/didactic training). Subsection (b)(3) requires that foreign-trained applicants must meet the minimum curriculum requirements and hours as defined in subsection (b)(1).

All applicants for examination are required to have submitted to the Board original transcripts directly from the institution where their education was obtained. The Board contacts the foreign institutions directly to verify all documents submitted. The Board also requires all applicants to be fingerprinted for criminal history information through both the California Department of Justice and the Federal Bureau of Investigation prior to licensure.

The Board has contracted with the DCA's Office of Examination Resources to perform an occupational analysis. It is anticipated to be completed by November 2001. The last occupational analysis was completed in 1996.

TABLE 6

CALIFORNIA ACUPUNCTURE LICENSING EXAMINATION				
	1997/98	1998/99	1999/00	2000/01
CANDIDATES	462	884	1060	1154
PASS %	65%	49%	62%	54%
NOTE: The above candidate numbers are for the written examination only. Effective July 1, 1999, the clinical exam administered by the board was eliminated.				

Applications for examination are required to be filed with the Board at least 120 calendar days prior to the examination date (CCR Section 1399.413). The regulations also require the Board to notify examinees of their results within 30 days from the date of examination. After the 150 days mentioned here, it is approximately another eight weeks before their license is issued.

TABLE 7

AVERAGE DAYS TO RECEIVE LICENSE	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Application to Examination	120	120	120	120
Examination to Issuance	86	86	86	86
Total Average Days	206	206	206	206

Continuing Education/Competency Requirements

Acupuncturists are required to complete 30 hours of continuing education (CE) every two years as a condition of license renewal. Licensees must list courses and hours completed and sign an affidavit attesting to completion of the required CE on their renewal applications.

If a licensee does not obtain the required CE hours, the Board may renew the license and require the deficient hours of CE to be made up during the following renewal period, in addition to the current CE requirement for that period. If a licensee fails to make up the deficient hours and complete the current requirement of CE hours during the subsequent renewal period, the license will not be renewed until all the required hours are completed and documented.

The content of CE courses must be relevant to the practice of acupuncture and related to the knowledge and/or technical skills required to practice acupuncture. Courses in practice management or professional ethics are acceptable and encouraged. Courses must include a method by which course participants can evaluate whether the course met its stated objectives; the adequacy of the instructor's knowledge of the course subject; the utilization of appropriate teaching methods; and the applicability or usefulness of the course information.

Effective January 30, 2000, the Board's regulations were amended to allow licensed acupuncturists to take up to 50% of the continuing education hours required in a non-classroom setting. Non-classroom setting may include audio, visual, internet, etc.

Comity/Reciprocity With Other States

To practice in California as an acupuncturist the law requires completion of one of the three licensure requirements described previously. Regardless of which

method is used, all current license applicants must pass the licensing examination, including applicants licensed in another state and/or those who have passed the national certification examination. There is no provision for reciprocity with other states and there is no provision for a temporary California acupuncture license.

ENFORCEMENT ACTIVITY

The California Acupuncture Board receives complaints from consumers, members of the profession, professional associations, law enforcement, governmental agencies and other states. While historically consumers and law enforcement have been the main source of complaints, the profession has become more proactive in reporting violations and unlicensed activity.

The Board requests that all complaints be submitted in writing. A detailed complaint form is available from the Board's office and website, or upon request from the DCA Consumer Information Center (CIC). This form provides information about filing a complaint, as well as explaining the Board's statutory authority to act and the process that is followed upon receipt of a complaint. In lieu of the complaint form, complainants may also submit a letter, identifying the practitioner who is the subject of the complaint, explaining the issues of concern and the action or results they hope to achieve by filing the complaint.

The Board currently does not have a statute addressing reporting requirements by other governmental agencies. However, the Board has included proposed language in this year's legislative package which requires that notification of any disciplinary action against a licensee be sent to the local business licensing entity where the licensee is currently known to be practicing. It is estimated that the Board responds to between 500 and 700 inquiries annually. These inquiries include, but are not limited to, scope of practice, ethics, laws and regulations, practice management, and disciplinary related issues. These inquiries are received via email, facsimile, telephone and U.S. mail, with the majority requiring a written response.

The CIC reported the following number of inquiries on the practice of acupuncture:

	<u>FY 1997/98</u>	<u>FY 1998/99</u>	<u>FY 1999/00</u>	<u>FY 2000/01</u>
Licensing	171	166	101	155
Complaints	30	199	540	50
Applications & Pamphlets	<u>31</u>	<u>119</u>	<u>78</u>	<u>54</u>
TOTAL	232	484	719	259

The Board uses the Consumer Affairs System (CAS) / Enforcement Tracking System (ETS) database to log and track all complaint and licensing information.

Therefore, all statistical tables have been completed using reports generated from this system.

TABLE 8

ENFORCEMENT DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Complaints Received (Source)	Total: 132	Total: 78	Total: 79	Total: 99
Public	50	39	37	36
Licensee/Professional Groups	6	3	7	16
Governmental Agencies	38	27	25	38
Other	38	9	10	9
Complaints Filed (By Type)	Total: 132	Total: 78	Total: 79	Total: 99
Competence/Negligence	14	11	9	3
Unprofessional Conduct	58	25	27	52
Fraud	5	4	6	6
Health & Safety	3	1	0	3
Unlicensed Activity	17	15	22	14
Sexual Misconduct	7	5	7	8
Personal Conduct	27	17	8	13
Complaints Closed	Total: 124	Total: 101	Total: 74	Total: 97
Investigations Commenced	Total: 40	Total: 29	Total: 32	Total: 20
Compliance Actions	Total: 33	Total: 11	Total: 9	Total: 8
ISOs & TROs Issued	0	0	0	0
Citations and Fines	0	0	0	1
Public Letter of Reprimand	0	0	0	0
Cease & Desist/Warning	33	11	9	7
Referred for Diversion	0	0	0	0
Compel Examination	0	0	0	0
Referred for Criminal Action	Total: 1	Total: 3	Total: 5	Total: 2
Referred to AG's Office	Total: 23	Total: 10	Total: 7	Total: 12
Accusations Filed	6	20	9	10
Accusations Withdrawn	1	1	0	2
Accusations Dismissed	11	0	0	0
Accusations Declined	5	2	1	0
Stipulated Settlements	Total: 3	Total: 6	Total: 1	Total: 3
Disciplinary Actions	Total: 6	Total: 12	Total: 7	Total: 11
Revocation	3	3	6	8
Voluntary Surrender	1	2	1	2
Suspension Only	0	0	0	0
Probation with Suspension	0	1	0	1
Probation	2	6	0	0
Probationary License Issued	0	0	0	0
Probation Violations	Total: 0	Total: 0	Total: 0	Total: 0
Suspension or Probation				
Revocation or Surrender				

As indicated in Table 8, complaints filed with the Board have decreased somewhat during the past three fiscal years. This is most notable in the category of incompetence/negligence, with fiscal year 2000-01 down by 72% from the average of three previous fiscal years. The number of complaints received from governmental agencies increased 27% from the average of three previous fiscal

years. This may be attributed in part to the creation of the Board's Enforcement Task Force.

The Enforcement Task Force held its first meeting beginning in April of 1998. The meetings included Board staff, the Office of the Attorney General/Department of Justice, the Division of Investigation (DOI), Immigration and Naturalization Service, Department of the Treasury, Department of Industrial Relations, Labor Standards Enforcement, and multi-level law enforcement staff from various city, county, state and federal agencies located in Southern California. The meeting provided a forum for all parties to ask questions, share common problems, understand jurisdictions, discuss laws relating to the practice of acupuncture, and methods of handling violations related to acupuncture. The increased public awareness may be attributed to the Board's outreach and education provided via media releases, participation in DCA consumer information fairs, updates to schools and availability of the Board's website.

The Board processes and acknowledges all complaints received. Every attempt is made to review complaints for jurisdiction, complexity and availability of factual materials within thirty days. The Board generally resolves less egregious complaints in house, except in those cases related to actual patient harm. Cases involving patient harm and/or sexual misconduct are automatically forwarded to the DOI for formal investigation.

Upon completion of initial complaint review, the following actions may be taken:

- ◆ Board contacts complainant for clarification and/or additional information.
- ◆ Board resolves complainant's issues, thereby closing the complaint.
- ◆ Complainant is notified the case was referred to another agency with jurisdiction over the issues alleged.
- ◆ Board requests a formal investigation by the DOI.

Cases are assigned a priority code upon complaint intake, which is logged on the ETS. The highest priority is assigned, but not limited, to those cases involving actual patient harm, mental impairment, and sexual misconduct. These types of complaint cases take precedence over those cases of a less egregious nature. The DOI is asked to expedite processing these cases. Depending upon the nature and degree of the alleged violation, cases from governmental agencies or officials may also receive priority handling.

Unprofessional conduct, unlicensed activity and sexual misconduct were the most frequent complaints received against licensees during this reporting period. These complaints may be initially investigated in-house, and if warranted, forwarded to the DOI requesting a formal investigation. Incompetence, negligence, and sexual misconduct, (all involve actual patient harm) and some allegations of fraud are automatically referred to formal investigation by the DOI. Violations of a less

egregious nature may result in a citation and fine, as opposed to more egregious cases warranting a formal accusation and disciplinary action.

The Board conducts an average of 30 licensee investigations per fiscal year as reflected in Table 8. This represents a slight decrease in the number of investigations opened in this review period as compared with the Board's last Sunset Review Report.

As illustrated in Table 8, *Referred for Criminal Action*, 11 cases were forwarded for criminal prosecution during this reporting period. Cases may be referred for criminal action by DOI, which has authority to issue criminal citations. These cases most often involve individuals, licensees, or entities that have harmed patients, engaged in unlicensed activity, engaged in criminal activity, or committed insurance fraud. Once the criminal citation is issued, the matter is referred to the local authority for criminal prosecution.

Table 8 indicates statistics relative to the Board's disciplinary actions during this review. The average number of formal accusations filed and disciplinary actions taken has been fairly consistent since the last Sunset Review Report. The majority of disciplinary actions pertain to unprofessional conduct and sexual misconduct with patients. Disciplinary cases may be heard by an administrative law judge, or resolved through stipulated settlement, and default actions due to various reasons.

The Acupuncture Board's *Disciplinary Guidelines* are used by the Attorney General, the Board, administrative law judges, and others involved in the enforcement process. These Guidelines are specifically used when the Board takes action to suspend, revoke, deny, order/modify probation, or reinstate a license, and are an essential component in providing for the fair and consistent application of penalties in the disciplinary process. In 1997, pursuant to SB 523 (Chapter 938, Statutes of 1995), the Board adopted a regulation to incorporate the Disciplinary Guidelines by reference.

Enforcement Program Overview

Consumers and law enforcement are the main source of licensee complaints. While there is no requirement for other states, government agencies, or other licensed health care professionals to notify the Board of disciplinary actions taken against California licensees, reporting is encouraged.

The Board and DOI investigators routinely experience problems in receiving or obtaining relevant information, documentation, and patient records for investigative purposes. Complainants, patients and/or witnesses are reluctant to come forward with a complaint and provide testimony. This is especially true with certain cultural or ethnic groups for fear of retaliation.

The majority of complaints filed involve unprofessional conduct, unlicensed practice and sexual misconduct. Accordingly disciplinary actions taken involve

unprofessional and sexual misconduct. The Board considers settlement in most cases, with the exception being those cases involving patient injury, and/or patient death. Cases settled are generally related to violations of a less harmful nature. When considering settlement in a disciplinary case it is the Board's policy to discuss and consider options during the hearing stage.

As illustrated in Table 8, a total of 36 cases resulted in 13 stipulated settlements during this reporting period; in those 36 cases the following results were attained:

- ◆ 55 % Revocation.
- ◆ 17 % Voluntary surrender of license.
- ◆ 6 % Revocation stayed, with suspension and probation.
- ◆ 22 % Revocation stayed, with probation.

The results from stipulated settlements are similar to those achieved should a matter proceed to a formal hearing with the Office of Administrative Hearings. Costs involved in settling a case prior to the hearing process are substantially less. Settlements result in saving both time and money for all parties.

The Board has experienced few changes in the source and type of complaints received, obtaining investigative information, or in the settlement process since the previous review.

Table 8 represents licensee complaints opened, closed, referred for formal investigation, accusations filed, and disciplinary actions for the current four-year reporting period. It should be noted that a complaint typically is not opened, investigated and either closed or referred for disciplinary action within the same fiscal year. An accusation may be filed in one fiscal year with the resulting disciplinary action occurring in a subsequent fiscal year.

TABLE 9

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
COMPLAINTS RECEIVED	132	78	76	99
Complaints Closed	125	102	74	99
Referred for Investigation	40	29	32	20
Accusation Filed	6	20	9	10
Disciplinary Action	6	13	7	11

As indicated in Table 9, 31% of complaints opened are referred for formal investigation, and 37% of those cases formally investigated, proceed to accusation. A comparison of disciplinary actions made in relation to the number of complaints received against licensees, shows that 10% of complaints against licensees result

in disciplinary action. This figure is consistent with statistics reported during the previous review.

An aggressive approach by the Board to expand its knowledge and understanding of existing laws has led to several amendments or the introduction of new laws relevant to acupuncture. The Board has become more proficient in their knowledge, understanding and interpretation of other California laws, which are relevant or essential to the practice of acupuncture, i.e., Corporations, Health and Safety, Uniform Building and OSHA Codes. This has positively impacted the disciplinary process by ensuring that those cases referred to accusation warrant disciplinary action. This has resulted in fewer administrative cases declined, dismissed, or rejected as unactionable, by the Office of the Attorney General. Similar results have occurred with criminal cases forwarded to local authorities.

There has been a marked and continuous increase in the public's awareness of the practice of acupuncture. As public awareness and acceptance becomes more widespread, so have the number of consumers seeking acupuncture treatment as complementary or primary health care throughout California and the United States. This has resulted in more inquiries made to the Board regarding license status, scope of practice, interpretation of laws, professional responsibilities, ethics, practice management, complaint, investigation, disciplinary and probationary action. These inquiries come from all avenues; the public, licensees, law enforcement, other licensed health care professionals, various federal, state, county and city agencies, insurance companies, professional associations, schools, students, attorneys and the media.

The Board evaluates each case during intake. Cases that are not within the Board's jurisdiction or those that are unactionable are referred to the appropriate agency or closed. Cases which cannot be resolved in-house or warrant formal investigation are forwarded to the DOI.

Case Aging Data

TABLE 10

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Complaint Processing	242	129	167	128
Investigations	356	267	305	209
Post-Accusation*	785	146	345	453
TOTAL AVERAGE DAYS**	2213	1108	952	965
*From formal charges filed to conclusion of disciplinary case logged on ETS.				
**From date complaint logged on ETS to date of final disposition of disciplinary case logged on ETS.				

The calculation for *Post-Accusation* in Table 10 is based upon the average number of days from filing (service) of the accusation to the final disposition. Final dispositions include license revocation, suspension, probation, surrender of the license, stay, or withdrawal of the accusation. As indicated, these time periods have varied throughout the four-year period and as a case progresses through this part of the process may be resolved through stipulated settlement or administrative hearing. Stipulated settlements generally are negotiated with the respondents and their attorneys through the Deputy Attorney General (DAG), in consultation with the Board's Executive Officer. Stipulated settlements are subsequently presented to the Board for a vote to adopt or reject. In cases moving to the administrative hearing process, the Board requests an Administrative Law Judge (ALJ) to preside and render proposed decisions. Depending on the outcome of the hearing and based on the action of the Board, resolution may take up to two years.

In reviewing the *Post-Accusation Average Days to Prosecute* for each of the fiscal years represented, it should be kept in mind that many factors can contribute to processing times. For example, a case in which an accusation is filed then proceeds to an administrative hearing, may take two or three times longer to conclude, than one in which an accusation is filed and settled by a stipulated settlement. In either case, the matter must then proceed to the Board for review and action. Each case is unique and time periods vary.

TABLE 11

INVESTIGATIONS CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
90 Days	4	3	3	14	19
180 Days	11	9	0	1	17
1 Year	6	8	6	6	20
2 Years	8	13	12	14	37
3 Years	1	0	2	1	3
Over 3 Years	3	0	1	1	4
Total Cases Closed	33	33	24	37	
AG CASES CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
1 Year	6	6	0	1	23
2 Years	2	5	4	1	21
3 Years	3	1	1	5	18
4 Years	0	1	0	2	5
Over 4 Years	16	3	0	0	33
Total Cases Closed	27	16	5	9	
Disciplinary Cases Pending	4	15	5	36	

The calculation for *Investigations Closed Within* Table 11 is based upon the number of days from assignment of a case for formal investigation to receipt of a final investigation report from the DOI. The calculation for *AG Cases Closed Within* is based upon the number of days from the referral of a case to the Office of the Attorney General to receipt of a final disposition.

The data provided in Table 11, *Investigations Closed Within*, demonstrates the average number of cases closed in the time span of 90 days to two years during this reporting period. The majority of investigations closed were within a two-year time frame.

In *AG Cases Closed Within*, a review of Table 11 shows that most cases were closed within three years. This figure is consistent with statistics reported during the previous sunset review.

Cases referred to the Office of the Attorney General took from two to eight months for the Board to receive an accusation package back from the DAG. The number of additional arrests made in several existing cases, required the DAG to file amended accusations.

Cite and Fine Program

As illustrated in Table 12 one citation with a fine has been issued and collected. CCR Section 1399.465 establishes that any administrative fine to be levied shall be no less that \$100 nor more that \$2,500.

TABLE 12

CITATIONS AND FINES	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Citations	0	0	0	0
Total Citations With Fines	0	0	0	1
Amount Assessed	0	0	0	\$500
Reduced, Withdrawn, Dismissed	0	0	0	0
Amount Collected	-	-	-	\$500

Results of Complainant Satisfaction Survey

The Board mailed a consumer satisfaction survey to 189 individuals whose complaints were processed between July 1, 1997 and June 30, 2001. Of the 101 surveys returned to the Board, 65 were actual survey responses and 36 were returned as undeliverable.

The Board follows standard procedures in the handling of all complaints and investigations. However, consumer satisfaction was greatest in those cases resulting in disciplinary action to the licensee.

TABLE 13

CONSUMER SATISFACTION SURVEY RESULTS*							
QUESTIONS		Responses					
# Surveys Mailed:	189	Satisfied			Dissatisfied		
# Surveys completed:	65	5	4	3	2	1	n/a
1. Were you satisfied with knowing where to file a complaint and whom to contact?		24	11	8	6	13	3
2. When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?		22	9	4	7	18	5
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?		13	9	8	8	23	4
4. Were you satisfied with the way the Board kept you informed about the status of your complaint?		11	5	8	8	27	6
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?		9	5	7	5	29	10
6. Were you satisfied with the final outcome of your case?		8	4	5	6	26	16
7. Were you satisfied with the overall service provided by the Board?		14	5	8	6	24	8

A detailed review of the completed responses for overall satisfaction of service showed the following:

- 22% were “very satisfied”.
- 8% were “satisfied”.
- 12% were “somewhat satisfied”.
- 9% were “dissatisfied”.
- 37% were “very dissatisfied”.
- 12% answered “N/A or not-applicable”.

ENFORCEMENT EXPENDITURES AND COST RECOVERY

The Board is not able to provide a factual average cost per case as requested by the Joint Legislative Sunset Review Committee in Table 14 below. As previously indicated, the Board uses DCA's CAS/ETS which is the only database available to the Board to track enforcement and licensing history. This database does not report the requested information in Table 14. Under *Average Cost Per Case Investigated* the number of closed cases are factual numbers; however, it does not reflect the actual number of cases investigated during the reporting period. For example, in 1997/98 it states there were 33 investigations closed, which is a factual number, but there may have been 45 cases investigated. The actual number of cases investigated is the more factual number to divide into the amount expended during that fiscal year.

TABLE 14

AVERAGE COST PER CASE INVESTIGATED	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Investigation & Experts	\$96,103	\$66,006	\$251,332	\$208,170
Number of Cases Closed	33	41	32	38
Average Cost Per Case				
AVERAGE COST PER CASE REFERRED TO AG	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Prosecution & Hearings	\$145,872	\$68,998	\$112,811	\$109,227
Number of Cases Referred	10	23	7	16
Average Cost Per Case				
AVERAGE COST PER DISCIPLINARY CASE				

The cost of investigation and experts has increased due to several cases involving unprofessional conduct related to massage/prostitution activity initially required additional evidence. Cases involving incompetence, negligence and sexual misconduct require an expert opinion. This opinion includes standard of care within the community, any departure or deviation from the standard and the degree of the departure or deviation. Cases requiring expert testimony are more costly to prosecute. The DAG must devote additional hours to process, research, or request additional investigation from DOI, obtain an expert opinion and testimony, then prosecute the case. The Board forwards those substantive cases that warrant formal investigation. This has reduced the number of cases referred to DOI, thereby increasing the workload of the Board to research complaint information,

obtain documents, contact complainants, licensees, enforcement officials, and other government agencies.

Prior to fiscal year 1998/99 the Board experienced significant difficulty in budgeting for prosecution and hearing costs. In 1999 the Office of the Attorney General completed prosecution of numerous cases related to the licensing examination bribery occurring in the late 1980's. Litigation expenses related to the prosecution of these cases was exorbitant and required a budget augmentation in fiscal year 1996/97 and 1997/98 through the deficiency request process. The Board was required to delay forwarding all new cases until the next fiscal year, and halt processing several existing cases already at the Office of the Attorney General.

Cost Recovery Efforts

The Board's policy is to pursue cost recovery where appropriate. All accusations include a plea for awarding costs. Table 15 illustrates cost recovery information during this review period.

TABLE 15

COST RECOVERY DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Enforcement Expenditures	\$245,998	\$136,297	\$374,187	\$380,679
# Potential Cases for Recovery*	10	23	7	16
# Cases Recovery Ordered	10	9	14	7
Amount of Cost Recovery Ordered/% of Enforcement Exp	\$5,000 / 2%	\$27,672 / 20%	\$11,423 / 3%	\$49,141 / 13%
Amount Collected	\$4,097	\$20,883	\$22,216	\$16,244
*The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the License Practice Act.				

Table 15 is divided into two components, *Potential Cost Recovery Cases* and *Cost Recovery in Relation to Case Expenditures*. Figures represented are number of cases, dollar amounts, and percentage of recovery rate. For each year within the review period, the Board's recovery rate has averaged eight percent of the total enforcement expenditures over the past four fiscal years.

Many cases that initially qualify by statute for cost recovery are concluded via methods that eliminate the potential for cost recovery. These methods include:

- Cases closed via default.
- Cases closed via stipulated revocation.
- Cases closed via stipulated surrender.

Should a respondent petition for reinstatement the Board requires payment of all cost recovery ordered but not collected due to a revocation or surrender of the license.

The amount collected illustrates recovery rates with respect to enforcement expenditures for those cases in which cost recovery was ordered or included in settlements. The percentage of recovery is substantial and reflects a strong success rate.

RESTITUTION PROVIDED TO CONSUMERS

The Acupuncture Board does not have, and is not currently considering, any provision for restitution. Therefore, no restitution to consumers is reported.

COMPLAINT DISCLOSURE POLICY

It is policy of the Acupuncture Board not to disclose complaint information regarding a licensee unless a violation has been established. The Board complies with current law regarding the confidentiality of licensee information. Information regarding open or closed complaints and investigations is not released to the public pursuant to Government Code Section 6254(f) of the Public Records Act. If an investigation substantiates a violation, and the Board takes action by issuing a citation or filing an accusation against the licensee, the citation or the accusation and resulting disciplinary action are public record.

The Board has issued a press release during this reporting period regarding disciplinary issues and resulting action taken against licensees. Disciplinary actions are also posted on the Board's website.

The Board's website also includes a license verification feature, which is available to anyone interested in obtaining licensee verification and status. Information available includes name of licensee, license number, status, issue and expiration date, address of record and disciplinary action(s). This information can also be obtained by contacting the Board. Detailed information regarding disciplinary actions or copies of documents filed against a licensee must be requested in writing.

TABLE 16

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed		X
Citation	X	
Fine	X	
Letter of Reprimand	X	
Pending Investigation		X
Investigation Completed		X
Arbitration Decision		X
Referred to AG: Pre-Accusation		X
Referred to AG: Post-Accusation	X	

Settlement Decision	X	
Disciplinary Action Taken	X	
Civil Judgment	n/a	
Malpractice Decision	n/a	
Criminal Violation: Felony Misdemeanor	n/a	

CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

The Board maintains a comprehensive and user-friendly website (www.dca.ca.gov/acup). The website provides the public with the following information:

- About the Board
 - Committee Assignments
 - History
 - Mission & Vision
 - Member Profiles
- What is Acupuncture?
 - Fact Sheet and Questions
 - Frequently Asked Question
- Licensing
 - Licensing and Application Process
 - License Renewal
 - Lapsed Licenses
 - Fees
 - Display of License
- Examinations
 - Requirements
 - Calendar
 - Examination Content
 - Development/Validation
 - Criterion-Referenced Scoring
 - Book/Reference List
 - Examination Security
 - Special Accommodations
 - Statistics
- Education
 - Requirements
 - Transcripts, Diplomas, etc.

	School List School Approval Process BPPVE Externships Satellite and Branch Tutorial Foreign Equivalency
• Continuing Education	Requirements How to Become a Provider Course Criteria/Content Approved Courses Audits
• Enforcement	Press Release(s) Consumer Complaint Information Warning to Acupuncturists Common Complaints Filed A Guide to Enforcement Language Professional Titles/Abbreviations Enforcement Statistics Board Actions and Decisions
• Law and Regulations	Business and Professions Code California Code of Regulations
• Board Meetings	Acupuncture Board Meeting Minutes and Agendas
• Miscellaneous	State & Federal Acupuncture Associations
• Publications and Forms	Licensing Examination Enforcement / Complaint Education
• Links	Government Agencies Business and Professions Code Board Approved Education Institutions Acupuncture Associations and National Organizations

DCA's Office of Information Systems reported the following number of hits to the Board's website which commenced November 1998:

<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
204	96,596	171,459	123,536*

*January-July
2001

The categories consistently receiving the highest number of hits are: California Acupuncture Board, examinations, licensing, acupuncture associations, education, links, publications and forms, licensing and application process, and laws and regulations.

The Board implemented a "license verification" feature on its website and has averaged about 2,700 license verification hits a month, which is not reflective in the website numbers indicated above. Information available includes licensee name, license number, status, address of record and disciplinary actions. Disciplinary information posted on the website lists the respondent's name, license number, the discipline imposed, the cause of discipline, statutes and regulations violated, as applicable, and the date the discipline became effective. Further details regarding the disciplinary action will be provided upon written request to the Board.

The Board's website offers two complaint forms to download; one to file a complaint against a licensee, and the other to register comments or complaints about the California Acupuncture Board. Instructions regarding how to file these complaint forms, as well as an explanation of the complaint process, are also included on the website.

Depending on future resources and the abilities to integrate all computer and technical systems maintained by the Department, assure data security, and accept digital signatures for documents that must be signed, the Board believes the following online capabilities may assist the public in terms of increased convenience and timeliness:

- Filing of applications (i.e., examination, licensing, continuing education provider) if accompanied by credit card payment of fee and digital signature.
- Renewal of licenses if accompanied by credit card payment of fees and digital signature.
- Filing of change of address.
- Filing of complaints.
- Online consumer assistance.

The Board has researched and is moving towards implementation of an online complaint filing process. The Board does not offer online licensure testing, nor believes it to be feasible or appropriate.

Regarding regulation of Internet business practices, pursuant to B & P Code Section 17500, advertising on the Internet is currently regulated.

PART 2.

Board's Response to Issues Identified And Former Recommendations Made by the Joint Legislative Sunset Review Committee

BOARD ISSUES

JLSRC 1997 - Issue #1:

Should the licensing of acupuncturists be continued?

JLSRC Recommendation

In its report to the Department of Consumer Affairs, the Joint Legislative Sunset Review Committee (JLSRC) recommended the State continue the licensure and regulation of the practice of acupuncture and Oriental medicine and the Acupuncture Board (Committee) should continue to be the regulating agency.

Discussion

Effective January 1, 1999, (SB 1980, Chapter 991) extended the sunset date of the Acupuncture Committee and changed the name to Acupuncture Board.

The Board believes licensing and regulation of acupuncture and Oriental medicine practitioners is necessary, as they are primary health care professionals directly affecting the health, safety and welfare of a patient and the public. The scope of practice for acupuncture and Oriental medicine includes modalities and treatment procedures unique to the profession. Acupuncture and Oriental medicine is based upon a different philosophy than allopathic western-trained health care professionals. The profession is recognized and accepted in California's MediCal and Worker's Compensation programs. The practitioners diagnose, administer treatment, perform treatments and prescribe herbs to promote patient health.

The Acupuncture Board should still continue to license and regulate the profession for the same reasons that existed in 1997. The unregulated practice of acupuncture could result in incompetent or unethical practice and/or severe patient harm. In addition, it could adversely impact the consumers' right to alternative forms of health care in California. Continued regulation by the state is essential to provide consumer protection and availability of competent practitioners to consumers seeking complementary health care. A study in the *Journal of the Family Practice* (2000) showed 33% of the patients seeking health care used a complementary medicine practitioner as their primary health care provider. Additionally, a study in

Archives of Internal Medicine (1998) showed 43% of medical doctors refer patients to alternative or complementary medicine providers.

Since its last review, the Board has made a number of changes to improve overall effectiveness and efficiency and respond to concerns and recommendations raised by the JLSRC. The Board has implemented several major changes since the last reporting period. The focus has been on raising educational standards, strengthening the enforcement program, modifying the licensing examination, developing the Board's Website and license verification, and producing a consumer brochure, as described in Part 1 of this report.

JLSRC 1997 - Issue #2:

Should the Acupuncture Board (Committee) be continued as is, be given more independence from the Medical Board, merged with the Medical Board, or have its operations and functions assumed by the Department of Consumer Affairs?

JLSRC Recommendation

JLSRC recommended that the Acupuncture Committee should remain as an independent state-licensing agency for acupuncture practice. Consideration should be given to: removing the minimal, apparently vestigial jurisdiction of the Medical Board (essentially just approval of Committee regulations); and changing the name of the Acupuncture Committee to the "Acupuncture Licensing Board of California," "Acupuncture Board," or the "State Board of Acupuncture and Oriental Medicine."

Discussion

As defined in Part I, History of the Board, acupuncture and Oriental medicine practitioners became regulated in 1972 under the Board of Medical Examiners (now called the Medical Board of California). By 1990 the then Acupuncture Committee was established as an autonomous body with the Medical Board retaining a procedural requirement that all proposed regulations be approved by them. Effective January 1, 1999 (SB 1981, Chapter 736), the Acupuncture Board secured its autonomy from the Medical Board of California and the name was changed from Committee to Board.

It is felt that the use of the term acupuncture in the Board's name only partially reflects the scope of practice of the profession. Acupuncture is one modality within the whole practice and philosophy of Oriental medicine. Therefore, the Board supports the name change to "California Board of Acupuncture and Oriental Medicine."

PRACTICE ISSUE

JLSRC 1997 - Issue #3:

Should the scope of practice for acupuncturists be expanded? Should the Acupuncture Board (Committee) regulate "herbalists" in California?

JLSRC Recommendation

JLSRC made no recommendation on this issue, stating that prior to any proposal to regulate herbalists in California, the Board should thoroughly evaluate the problems, examine the overlap with other professions and oversight by other state and federal agencies.

Board Recommendation

This has been an issue in the Board's Strategic Plan since 1996. The Board concurs with the caution proposed by the JLSRC. The Board's primary goal is to protect the consumer, and is concerned about possible misuse and potential danger from medicinal-grade herbs. The Board continues to collect data from state and federal agencies, and private companies regarding the legal and illegal importation, distribution, prescription, and/or sale of herbs.

The Board will continue to work with the Food and Drug Administration (FDA) and the Food and Drug Branch of the Department of Health Services (FDB) to identify dangerous and illegal herbs, provide professional testimony, and when necessary, Make recommendations.

BOARD ISSUE

JLSRC 1997 - Issue #4:

Should the size or composition of the Acupuncture Board (Committee) be changed?

JLSRC Recommendation

JLSRC recommended that the Legislature may want to consider reducing the size of the Acupuncture Board (Committee) from 11 members to 10 or even 9 members, and increasing the representation of public members thereon.

Discussion

Effective January 1, 1999 (SB 1980, Chapter 991), the size of the Acupuncture Board was reduced from eleven members to nine members, composed of four licensed members, four public members and one licensed M.D. with experience in acupuncture.

The Board continues to support the current composition. Professional members provide a base for the knowledge skills and abilities of the practice and professional

expertise needed to address medical and practice issues before the Board. Professional members are also required to participate in the review of clinic practice during the approval process of acupuncture and Oriental medicine educational institutions. The current composition of the Board is well balanced to provide consumer protection.

LICENSING EXAMINATION ISSUE

JLSRC 1997 - Issue #5:

Should changes be made to the Acupuncture Board's (Committee) licensure examination, should that examination be eliminated or should the national examination be accepted for licensure?

JLSRC Recommendation

JLSRC recommended the California Acupuncture Licensing Examination's written and practical examination should be retained for the present. The requirement that the Board contract with an independent consultant to develop and administer its examination also should be retained.

Discussion

1999 Trailer Bill language (Chapter 67, Statutes of 1999) abolished the clinical examination requirement for acupuncture licensure in California. The written examination is being developed by the Department of Consumer Affairs' Office of Examination Resources (OER) and administered by Cooperative Personnel Services (CPS).

The national examination referenced is actually a "certification" examination administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), in which an applicant can take the examination prior to graduation from their educational program. The position of the Board and OER is that a certification examination serves a different purpose than a state licensing examination.

Statistically, the California written licensing examination is performing at its highest level since the start of the examination process. The pass rate varies between 50-65%. California was one of the first states in this country to regulate and license acupuncturists. California has licensed more acupuncture and Oriental medicine practitioners (6,809 active licensees through FY 2000/01) than the rest of the states combined. California remains a leader in the United States to establish and set standards, therefore, the Board feels that California should retain its acupuncture licensing examination.

ENFORCEMENT ISSUES

JLSRC 1997 - Issue #6:

Should additional enforcement authority be given to the Acupuncture Board (Committee) to address identified violations of the acupuncture laws? Should the list of violations that are included within "unprofessional conduct" be clarified, by stating that unprofessional conduct is not limited to just the specified offense?

JLSRC Recommendation

JLSRC recommended that the Board should provide additional information substantiating the existence of particular types of violations such as false or misleading advertising, unlicensed activity, or unsanitary conditions in acupuncture practices. If unlicensed activity, reflected in advertisements in telephone directories or newspapers is substantiated, it may warrant giving the Committee so-called "telephone disconnect" authority. Also, requiring licensees to provide their names and license numbers in all advertising should be evaluated for the potential to eliminate unlawful activity and increase the Committee's enforcement capability.

The JLSRC also recommended adding the term "but not limited to" regarding what acts are included within unprofessional conduct, indicating this may increase the Board's ability to implement disciplinary action. The JLSRC felt the Board should provide additional information to show how the lack of this terminology has precluded it from taking action in appropriate cases.

Another separate issue raised by the JLSRC in Issue #6 related to delinquent license penalty fees. The JLSRC recommended that given the apparent high number of delinquent licensees failing to renew their licenses, the Board should increase the delinquent license penalty fee, to that which has been enacted for other licensing agencies.

Discussion

B&P Code section 4970(e) was amended to set the delinquency fee in accordance with B&P Code section 163.5 (SB 1980, Chapter 991, Statutes of 1998). Section 163.5 allows for the delinquency, penalty, or late fee for any licensee within DCA to be set at 50% of the renewal fee, with a minimum of \$25 and a maximum of \$150. CCR Section 1399.460 (f) established a \$25.00 delinquency fee for board licensees. The number of delinquent licensees who fail to renew their licenses with the Board has remained high in this profession. The Board is evaluating an appropriate amount in which to increase the delinquent license penalty fee through the regulatory process.

The Board currently has proposed language, which revises the disciplinary statutes to include a general provision for unprofessional conduct relating to violations involving licensee conduct/behavior. The language also separates and assigns individual code sections to the more egregious violations involving patient harm, injury and/or death, fraud and corruption. The term "unprofessional conduct" in its present language encompasses "all offenses", whether major or minor. Existing

language does not provide an adequate description of the nature or degree of violations or offenses.

The ambiguity of the term has repeatedly prohibited or hampered the ability of all levels of law enforcement to effectively take disciplinary action against licensees in violations of acupuncture laws.

The proposed language also provides a much-needed tool for compiling more specific and accurate enforcement data. This data is reported to the public, the profession, in annual statistical reports for the legislature and for budget changes and projections of the Board.

The Board's proposed language, approved by the Board May 2001, is attached to this report for JLSRC consideration. The proposal also includes a section describing the problem addressed with each section amendment.

JLSRC 1997 - Issue #7:

Should willful licensed and unlicensed practice that results in great bodily harm, serious physical or mental illness, or death be made a felony?

JLSRC Recommendation

JLSRC made no recommendation

Discussion

Currently, unlicensed practice is a misdemeanor violation. The Board has proposed increasing the penalty for unlicensed practice that results in serious patient harm, injury or death, to a felony rather than a misdemeanor. The Board believes that such a penalty is an inadequate deterrent to unlicensed practice. The Board recommends including a felony provision in the acupuncture laws to provide more explicit and meaningful enforcement authority for district attorneys and local law enforcement. Allied health and healing arts and medical laws currently contain standard felony violation language. The acupuncture laws should be consistent with these health care standards.

CONTINUING EDUCATION ISSUE

JLSRC 1997 - Issue #8:

Should changes be made regarding the current continuing education requirement?

JLSRC Recommendation

JLSRC recommended that consideration should be given for limiting the board's current authority to grant two-year waivers of the 30-hour continuing education

prerequisite for license renewal. Waivers should only include circumstances of dire need or circumstances beyond the control of the licensee (e.g., serious illness).

Discussion

B&P Code Section 4945(e) defines that if a license does not obtain the required CE hours, the Board “may” renew the license during the following renewal period, in addition to the current CE requirements for that period. To request a waiver, the licensee must submit a written request defining the need to do so. This waiver is usually extended to those licensees who provide adequate evidence. It has been the policy of the Board to approve a licensee only one waiver. If a licensee fails to make up the deficient hours and complete the current requirement of CE hours during the subsequent renewal period, the license will not be renewed until all the required hours are completed and documented. CCR Section 1399.483(d) was amended in 1999 to allow a maximum of 50% of the required continuing education hours for license renewal to be taken in a distance learning course to allow an alternative to fulfill required continuing education hours.

EDUCATIONAL ISSUE

JLSRC 1997 - Issue #9:

Should acupuncture schools be required to obtain approval from the Bureau of Private Postsecondary and Vocational Education (BPPVE)(formerly the CPPVE), or similar governmental approval if located outside of California, prior to obtaining Acupuncture Board (Committee) approval? Should the time period in which an acupuncture graduate may practice acupuncture in a supervised, postgraduate review course without obtaining a license be extended from three to six months?

JLSRC Recommendation

JLSRC tentatively concurred with the Acupuncture Board that BPPVE, or similar approval, should be a prerequisite for Acupuncture Board approval in the future. The

Board should provide additional information on the rationale and possible effect of this prerequisite for schools and acupuncture students. The JLSRC supported with the extension of permissible supervised practice in postgraduate review courses by acupuncture school graduates.

Discussion

The Board has not focused on the acupuncture school approval process since the time of the last reporting, due to limited resources. Issues the Board prioritized and focused on were the evaluation of the problems that plagued the clinical component of the licensing examination and transition to an all written examination once the

clinical was eliminated; and the study of professional competencies and evaluation of current curriculum standards.

Fiscal Year 2000/2001, the Educational Committee has commenced focusing on this issue. The Committee has held public meetings to review the application and review processes for the Bureau of Private Postsecondary and Vocational Education's (BPPVE), and the Accreditation Commission of Acupuncture and Oriental Medicine's (ACAOM). The Board is also reviewing its current school approval process, and the program's policies and regulations to determine if they are adequately defined.

Currently there are 29 schools offering acupuncture and Oriental medicine masters programs that have been approved by the Board. The number of acupuncture and Oriental medicine schools requesting applications for approval has dramatically increased. There were two school applications requested in 1998/1999, five in 1999/2000 and 19 in 2000/2001. The approval process requires extensive review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures, and financial solvency. Following application processing and review, a full on-site visit is performed to review implementation of application policies and procedures, facilities and clinical training. A final written report is prepared by the site visit team and presented to the Board. The Board reviewed, visited and approved five new acupuncture and Oriental medical schools within the last four years. The average application and curriculum review, site visit, report preparation and presentation to the Board take approximately 250-400 hours.

The Board amended B&P Code Section 4935 (AB 2888, Chapter 568) to provide acupuncture students with additional time, of up to one year, to attend postgraduate review courses prior to sitting for the licensing examination, at a school approved by the Board.

EDUCATIONAL STANDARDS ISSUE

BOARD'S 2001 - Issue #10 (New):

Should the educational curriculum standards for the practice of acupuncture and Oriental medicine be increased?

Discussion

To ensure that California consumers receive acupuncture treatment from competent acupuncturists, individuals practicing in this state are subject to regulation and control as a primary health care profession. The Acupuncture Board carries out this mission through the appropriate regulation of licensing, education standards, and enforcement of the Acupuncture Licensing Act. Licenses are issued to only those individuals who complete educational and training programs approved by the Board

and pass the California licensing examination.

The Acupuncture Board is directed by California law to establish the educational standards for an individual to become a licensed acupuncture and Oriental medicine practitioner in the State of California. Furthermore, Business and Professions Code Section 4938 requires that an applicant complete an education and training program approved by the Board. Thus, the Board is required to establish educational standards for the approval of schools and colleges offering an educational program and training in the practice of acupuncture and Oriental medicine.

California Business and Professions Code Section 4926, states that “individuals practicing acupuncture be subject to regulation and control as a primary health care profession.” The Board’s main objective is to ensure an adequate level of education that provides the applicant with the knowledge, skills and abilities to perform as a primary health care professional. A primary healthcare professional is a first-contact healthcare practitioner who possess the skills necessary to provide comprehensive and routine care (preventive, diagnostic, palliative, therapeutic, curative, counseling and rehabilitative) for individuals with common health problems and chronic illnesses that can be managed on an outpatient basis, and who can differentiate health conditions that are amenable to their management from those conditions that require referral or co-management.

All primary health care providers, medical doctors, doctors of osteopathic, doctors of chiropractic, doctors of podiatry, and naturopathic doctors, should have a core medical curriculum leading to basic medical understanding. In addition, all medical practitioners should have an overview of the strengths and weaknesses of other modalities in order to know when to refer and how best to communicate to those other providers. It is in the patient’s best interest that medical practitioners possess common core knowledge of medical terminology and knowledge in order to promote good professional communication, patient case management, and continuity of care. Acupuncture and Oriental medicine practitioners, as well as all providers listed in the California Labor Code Section 3209.3, as physicians are required to complete accurate, uniform, and replicable evaluations. The procedures require an evaluation of anatomical loss, functional loss, and the presence of physical complaints to be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

The Board has been studying professional competencies, the knowledge, skills and abilities required of the practitioner today and evaluation of the current educational curriculum requirements. It is the intent of the Board to elevate the profession to current health care standards and increase educational standards for an individual to become a licensed acupuncture and Oriental medicine practitioner in the State of California.

LICENSING EXAMINATION ISSUE

BOARD'S 2001 - Issue #11 (New):

Current discussion items or decisions made that affect the California Acupuncture Licensing Examination (CALE): (1) Number of questions on the examination, and (2) Language of the licensing examination.

Discussion

Regarding item 1, in February 2001, the Board took action to reduce the number of questions on the examination from 250 to 200 (175 scorable and 25 pre-test questions), which took affect for the June 2001 examination.

Regarding item 2, per CCR Section 1399.441, the licensing examination is administered in English, Chinese and Korean. In memorandums dated, February 12 and June 7, 2001, the Department of Consumer Affairs' Office of Examination Resources (OER) advised the Board of their concerns about adapting the English exam into other languages. OER cited that it creates an unstandardized examination when adapted and that the three tests, English, Chinese and Korean, are not equivalent measures of minimum competence. OER believes that the tests vary in terms of difficulty and equivalency when translated. OER recommended the licensing examination be administered in English only.

The Board has discussed this issue extensively at each board meeting since. The Board has taken action to reject OER's proposal at this time. The Board also has established a task force to continue evaluating the issue and to review the same data and resources that OER has had available and used to substantiate their position to make such a recommendation and determination, which has been requested from OER.

3.

BACKGROUND PAPER FOR 2001 PUBLIC HEARING

PRIOR SUNSET REVIEW: The Joint Legislative Sunset Review Committee (Joint Committee) last reviewed the Acupuncture Board (Board) four years ago (1997/1998). The Joint Committee identified a number of issues and problem areas concerning the Board and made the following recommendations: (1) the licensing of acupuncturists and the Board should be continued; (2) all proposals to further expand the scope of acupuncture practice should be evaluated on a case-by-case basis and subjected to “sunrise” review; (3) further study should be done on the regulation of herbalists, including an evaluation of the problems with other professions and oversight by other state and federal agencies; (4) reduce the size of the Board to nine members, with four acupuncturists, four public members and one physician; (5) California's written and practical examination should be retained for now, but the Board should continue evaluating the national examination, given the time, effort and cost involved in providing their own examination; (6) the Board contract with an independent consultant to develop and administer its examination should also be retained; (7) those licensed by the Board should be required to display their licenses in the locality in which they are treating patients, and provide their names and license numbers in advertising of their services; (8) increase the delinquent license penalty fee (currently \$25), given the apparent high number of delinquent licensees who fail to renew their licenses; (9) the Board's authority to grant two year waivers of the 30-hour continuing education prerequisite for license renewal should be limited, and only include circumstances of dire need or circumstances beyond the control of the licensee (e.g., serious illness); (10) the Bureau of Private Postsecondary and Vocational Education, or similar approval, should be a prerequisite for Board approval in the future; and (11) the acupuncture school graduate be able to practice in postgraduate supervised review courses without a license for six months rather than just three.

In September 2001 the Board submitted its required sunset report to the Joint Committee. In this report, information of which is provided in Members’ binders, the Board described actions it has taken since the Board’s prior review.

The following are unresolved issues pertaining to this Board, or areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff has asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

BOARD POWERS, DUTIES, AND COMPOSITION ISSUES

ISSUE #1: The law provides that a majority of the appointed members of the Board shall constitute a quorum.

Question #1 for the Board: *Are there vacancies on the Board? What is the fewest number of Members under which the Board has operated?*

Background: The make up of the nine member Board is specified in Business and Professions Code Section 4929. This section provides that four Board members shall be acupuncturists with at least five years of experience in acupuncture and not licensed as physicians and surgeons, one member of the Board shall be a physician and surgeon licensed in this state with two years of experience in acupuncture, and four members shall be public members who do not hold a license or certificate as a physician and surgeon or acupuncturist. It appears that there are currently two vacancies on the Board: one acupuncturist member and one physician member.

Business and Professions Code Section 4933(c) states that a majority of the appointed members of the Board shall constitute a quorum to conduct business. This law appears to be unique to this Board.

ISSUE #2: The Board supports a name change to the “California Board of Acupuncture and Oriental Medicine,” stating that acupuncture is one modality within the whole practice and philosophy of Oriental medicine.

Question #2 for the Board: *What costs, if any, would the Board incur as part of a name change? Does the Board think that this name might confuse consumers? Is there a need to license individuals as either an acupuncturist or as a practitioner of Oriental medicine? Are they one in the same?*

Background: Acupuncturists became regulated in 1972 under the Board of Medical Examiners (now called the Medical Board of California). By 1990 the Acupuncture Committee was established as an autonomous body with the Medical Board retaining a procedural requirement that all proposed regulations be approved by them. Effective January 1, 1999 (SB 1981, Chapter 736), the Acupuncture Board was given its autonomy from the Medical Board of California and the name was changed from Committee to Board.

In their current report to the Joint Committee, the Board indicates that it is felt that the use of the term acupuncture in the Board’s name only partially reflects the scope of practice of the profession. Acupuncture is one modality within the whole practice and philosophy of Oriental medicine. Therefore, the Board supports the name change to “California Board of Acupuncture

and Oriental Medicine.” However, since the Board only issues an acupuncturists’ license and not a license entitled doctor of Oriental medicine this name could be misleading.

ISSUE #3: It is unclear whether the Board annually reports to the Legislature as is required by law.

Question #3 for the Board: *Does the Board annually report to the Legislature?*

Background: Business and Professions Code Section 4946 requires the Board to report to the Legislature on January 31st day of each year on the nature and extent of the standards, test and experience requirements adopted pursuant to the Acupuncture Licensure Act (Act), as well as statistical information, relating to the total number of person certified under this Act to that date and the number of persons certified within the preceding year. The report shall include recommendations for legislation if the Board considers legislation to be necessary.

There is no evidence of this report either in the Board’s current report to the Joint Committee or on the Board’s website.

BUDGETARY ISSUES

ISSUE #4: The Board has submitted a budget change proposal for fiscal year 2002-03 for additional positions.

Question #4 for the Board: *What types of positions are these and what functions will they perform? Why has the Board concluded that existing staff is insufficient?*

Background: The Board’s current report to the Joint Committee indicates that they have nine full-time permanent and four part-time seasonal positions. The Board has submitted two budget change proposals (BCP's) for FY 2002/2003 for two additional positions.

ISSUE #5: Is the Board spending too much on their examination program?

Question #5 for the Board: *Describe and itemize your annual expenditures for your examination program. Why does the Board spend more on their examination program than on their enforcement program?*

Background: The Board’s current report to the Joint Committee indicates that they annually spend \$648,103 (40%) on their examination program and \$469,874 (29%) on their enforcement program. The largest expenditure for a Board is usually their enforcement program.

ISSUE #6: The Board’s report categorizes the revenue they receive. One of those categories is labeled external/private/grant.

Question #6 for the Board: *What does this category entail? What type of private money is the Board receiving?*

Background: The Board's current report to the Joint Committee delineates their revenue sources. One of those sources is labeled external/private/grant and during fiscal year 2000/2001 the Board received \$9,084 from this source. It is unclear what this source is.

ISSUE #7: In the past, the Board has experienced significant difficulty budgeting for prosecution costs.

Question #7 for the Board: *What has the Board done to ensure proper budgeting? Has the Board been unable to prosecute cases because they were unable to pay the prosecution (Attorney General) costs?*

Background: The Board's current report to the Joint Committee indicates that prior to fiscal year 1998/1999 they experienced significant difficulty in budgeting for prosecution and hearing costs. In 1999 the Office of the Attorney General completed prosecution of numerous cases related to the licensing examination bribery occurring in the late 1980's. Litigation expenses related to the prosecution of these cases was exorbitant and required a budget augmentation in fiscal year 1996/1997 and 1997/1998 through the deficiency request process. The Board was required to delay forwarding all new cases until the next fiscal year, and halt processing several existing cases already at the Office of the Attorney General.

LICENSURE ISSUES

ISSUE #8: The Board appears to be proposing to increase the education requirement for the practice of acupuncture and oriental medicine.

Question #8 for the Board: Is the Board proposing to increase the education requirement for applicants? If so, why should the education requirement to be licensed by the Board be increased? Will the change act as an unnecessary barrier to entry? What additional education would be required, and in what subject areas, and what would the impact of costs be on students? How many Board approved schools would be able to provide these additional courses? What percentage of current licensees believe that additional education is necessary? Have future applicants (students) been surveyed concerning this proposal? Will the examination be modified to reflect the proposal? What measures will the Board take to ensure that existing students are not impacted by the proposed standards? What measures will the Board take to ensure the competency of existing licensees? What are the educational requirements of other states?

Background: Business and Profession Code Section 4938 states:
The Board shall issue a license to practice acupuncture to any person who makes an application and meets the following requirements:

- (a) Is at least 18 years of age.
- (b) Furnishes satisfactory evidence of completion of one of the following:

- (1) An educational and training program approved by the Board pursuant to Section 4939.
- (2) Satisfactory completion of a tutorial program in the practice of an acupuncture, which is approved by the Board.
- (3) In the case of an applicant who has completed education and training outside the United States and Canada, documented educational training and clinical experience that meets the standards established pursuant to Sections 4939 and 4941.
- (c) Passes a written examination administered by the Board that tests the applicant's ability, competency, and knowledge in the practice of an acupuncturist. The written examination shall be developed by the Office of Examination Resources of the Department of Consumer Affairs.
- (d) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

Pursuant to the above, subsection (b)(1) involves graduation from an approved acupuncture school or college with a specified minimum curriculum of 2,348 hours (1,548 didactic/theoretical training and 800 hours supervised clinical training). Subsection (b)(2) involves 2,850 hours (2,250 hours clinical training and 600 hours theoretical/didactic training). Subsection (b)(3) requires that foreign-trained applicants must meet the minimum curriculum requirements and hours as defined in subsection (b)(1).

In the past, the Board has proposed regulations to increase the required number of curriculum hours from 2,348 to a total of 3,200 hours. The Board's current report to the Joint Committee indicates that they have been studying professional competencies, the knowledge, skills and abilities required of the practitioner today and evaluation of the current educational curriculum requirements. It is the intent of the Board to elevate the profession to current health care standards and increase educational standards for an individual to become a licensed acupuncture and Oriental medicine practitioner in the State of California.

ISSUE #9: The last time the Board was reviewed, the Joint Committee concurred with the Board that the Bureau of Private Postsecondary and Vocational Education (BPPVE), or similar approval for schools outside California, should be a prerequisite for Board approval of schools.

Question #9 for the Board: *Can the Board provide the status of this proposal? Can the Board elaborate on their involvement in the school approval process? Can the Board elaborate on the BPPVE's involvement in the school approval process? What standards has the Board set for school approval, including faculty and curriculum requirements?*

Background: Business and Professions Code Section 4939(a) provides that the Board shall establish standards for the approval of schools and colleges offering education and training in the practice of acupuncture, including standards for the faculty in those schools and colleges, and tutorial programs, completion of which will satisfy the requirements of Section 4938. Business and Professions Code Section 4939(b) generally provides that within three years of initial approval by the Board each program so approved by the Board shall receive full institutional approval from the BPPVE in the field of traditional Oriental medicine, or in the case of

institutions located outside of this state, approval by the appropriate governmental educational authority, or the Board's approval of the program shall automatically lapse.

During the Board's last review, the Joint Committee and the Board agreed that BPPVE, or similar approval, should be a prerequisite for future Board approval. In their current report to the Joint Committee, the Board states that they have not focused on the acupuncture school approval process since the time of the last reporting, due to limited resources. However, the Board's report does state that beginning fiscal year 2000/2001, their Educational Committee commenced focusing on this issue. The Committee has held public meetings to review the application and review processes for the BPPVE, and the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM). The Board is also reviewing its current school approval process, and the program's policies and regulations to determine if they are adequately defined.

In their current report to the Joint Committee, the Board states that there are currently 29 schools offering acupuncture and Oriental medicine masters programs that have been approved by the Board. The number of acupuncture and Oriental medicine schools requesting applications for approval has dramatically increased. There were two school applications requested in 1998/1999, five in 1999/2000 and 19 in 2000/2001. The approval process requires extensive review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures, and financial solvency. Following application processing and review, a full on-site visit is performed to review implementation of application policies and procedures, facilities and clinical training. A final written report is prepared by the site visit team and presented to the Board. The Board reviewed, visited and approved five new acupuncture and Oriental medical schools within the last four years. The average application and curriculum review, site visit, report preparation and presentation to the Board take approximately 250-400 hours.

ISSUE #10: The last time the Board was reviewed, they were considering reducing their inactive license fee. The active and inactive fees are the same.

Question #10 for the Board: *Why did the Board decide to maintain the same fee regardless of a licensee's status?*

Background: Title 16, California Code of Regulations, Section 1399.489.1 (a) - (b), states that any acupuncturist who is not actively engaged in the practice of acupuncture desiring an inactive license under the provisions of Article 9 (commencing with Section 700 of the Business and Professions Code) Chapter 1 of Division 2 of the code or to restore an inactive license to active status shall submit an application to the Board on a form provided by it. In order to restore an inactive license to active status, the licensee must complete a minimum of 30 hours of approved continuing education within the last two years in compliance with this article. The Board requires an inactive licensee to pay the same fee as an active licensee, \$325.00, but the Board does not require the inactive licensee to complete the continuing education requirements.

Business and Professions Code Section 701 states that each healing arts board shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or

otherwise punitively restricted by that board. Business and Professions Code Section 703 states that an inactive healing arts license or certificate shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew, the holder need not comply with the continuing education requirement for renewal of an active license or certificate. The renewal fee for a license or certificate in an active status shall apply also for renewal of a license or certificate in an inactive status.

ISSUE #11: The Board is proposing to change the law so that acupuncturists can diagnose within the scope of their practice.

Question #11 for the Board: *Can the Board clarify the existing scope of practice for an acupuncturist? For example, can an acupuncturist diagnose; treat; prescribe? Can the Board please explain what their proposal would authorize an acupuncturist to do/perform, and is it considered an expansion of their scope of practice?*

Background: Section 4926 of the Business and Professions Code states the following legislative intent, in its concern with the need to eliminate the fundamental causes of illness, not simply to remove symptoms, and with the need to treat the whole person, the Legislature intends to establish in this article, a framework for the practice of the art and science of Oriental medicine through acupuncture. The purpose of this article is to encourage the more effective utilization of the skills of acupuncturists by California citizens desiring a holistic approach to health and to remove the existing legal constraints that are an unnecessary hindrance to the more effective provision of health care services. Also, as it effects the public health, safety, and welfare, there is a necessity that individuals practicing acupuncture be subject to regulation and control as a primary health care profession.

Section 4927(d) of the Business and Professions Code defines "acupuncture" as the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion.

Section 4937 of the Business and Professions Code states that an acupuncturist's license authorizes the holder thereof:

- (a) To engage in the practice of acupuncture.
- (b) To perform or prescribe the use of oriental massage, acupressure, breathing techniques, exercise, or nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health.

In their current report to the Joint Committee, the Board is proposing to amend Section 4937 of the Business and Professions Code to specify that an acupuncturist's license authorizes the licensee to, *diagnose within the scope of practice of a licensed acupuncturist*. The Board's report states that in the 1980's the law was changed, no longer requiring a referral from a physician, dentist, podiatrist or chiropractor for a patient to seek treatment from a licensed acupuncturist. Because the law omitted the term diagnose/diagnosis it has not specified authority for acupuncturists to do so. This has been the subject of several legal opinions and arguments for

well over a decade. It was “assumed” that as a primary health care provider, they would have the legal authority to diagnose a patient within their scope of practice. Adding the term diagnose would correct the omission.

It is unclear exactly what is within an acupuncturists’ scope of practice currently and what the proposed Board provision will add or clarify.

ISSUE #12: The Board is proposing a regulation to allow licensed acupuncturists, who have obtained their doctorate degree from an accredited, approved or authorized educational institution outside of California, to use the title “Doctor of Oriental Medicine.” It is unclear under what circumstances, if any, an acupuncturist can refer to himself/herself as an Oriental Medical Doctor or a Doctor of Oriental Medicine.

Question #12 for the Board: *Can the Board clarify the state of the law on this matter, the impact of their proposed regulation and why is it necessary?*

Background: Title 16, California Code of Regulations, Section 1399.456 states that it is unprofessional conduct for an acupuncturist to use the title “Doctor” or the abbreviation “Dr.” in connection with the practice of acupuncture unless he or she possesses an earned doctorate degree from an accredited, approved or authorized educational institution as set forth under Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 which is in acupuncture, Oriental medicine, a biological science, or is otherwise related to the authorized practice of acupuncture. The Board is proposing a regulation to amend Section 1399.456 to allow licensed acupuncturists who have obtained their doctorate degree from an accredited, approved or authorized educational institution outside of California to use the title Doctor of Oriental Medicine.

It is unclear under what circumstances, if any, an acupuncturist can use the title Doctor of Oriental Medicine. Are they limited to the use of abbreviations?

ISSUE #13: Under certain instances, other licensed health practitioners, such as physicians, podiatrists and dentists may also practice acupuncture.

Question #13 for the Board: *Does the Board think this exemption puts consumers at risk?*

Background: Business and Professions Code Section 4937(b) provides what an acupuncturists’ license authorizes the holder to do. This section states, nothing in this section prohibits any person who does not possess an acupuncturist’s license or another license as a healing arts practitioner from performing, or prescribing the use of, oriental massage, breathing techniques, exercises, or nutrition to promote health, so long as those activities are not performed or prescribed in connection with the practice of acupuncture. Business and Professions Code Section 4947 states that nothing in this chapter shall be construed to prevent the practice of acupuncture by a person licensed as a dentist or a podiatrist, within the scope of their respective licenses, if the licensee has received a course of instruction in acupuncture. This course material shall be approved by the licensing board having jurisdiction over the licensee. The board shall

assist the licensing boards in providing information as requested by the individual licensing boards.

The Board's last report to the Joint Committee stated that under certain circumstances, other licensed practitioners may also practice acupuncture. The Board does not believe that the limited training in Oriental medicine that is required of these other practitioners is sufficient protection for consumers because licensees are engaged in activities and practices that, without proper education, training and regulation, could cause varying degrees of public harm from minor injury to death. For example, physicians are not required to receive minimal training before performing acupuncture services.

EXAMINATION ISSUES

ISSUE #14: The last occupational analysis was completed in 1996. The Board has contracted with the Department of Consumer Affairs' Office of Examination Resources to perform an occupational analysis. The Board anticipated the completion by November 2001.

Question #14 for the Board: *What is the status of the occupational analysis?*

Background: According to the Board's current report to the Joint Committee, they have contracted with the Department of Consumer Affairs' Office of Examination Resources (OER) to perform an occupational analysis. It is anticipated that the analysis will be completed by November 2001. The last occupational analysis was completed in 1996.

ISSUE #15: Can the Board's examination be validated if provided in other languages? What would be the cost to do so?

Question #15 for the Board: *Does the Board feel that offering the examination in Chinese and Korean compromises the validity of the examination? Does the Board feel that the examination would hold up to legal scrutiny? Does the Board feel that the recent reduction in the number of questions compromises the validity of the examination? Would the cost to validate in other languages be too prohibitive?*

Background: The Board's examination is offered in English, Chinese and Korean. In memorandums dated, February 12 and June 7, 2001, the OER advised the Board of their concerns about adapting the English exam into other languages. OER cited that it creates an unstandardized examination when adapted and that the three tests, English, Chinese and Korean, are not equivalent measures of minimum competence. OER believes that the tests vary in terms of difficulty and equivalency when translated. OER recommended the licensing examination be administered in English only.

The Board has discussed this issue extensively at each board meeting since. The Board has taken action to reject OER's proposal at this time. The Board also has established a task force to continue evaluating the issue and to review the same data and resources that OER has had

available and used to substantiate their position to make such a recommendation and determination, which has been requested from OER.

ISSUE #16: The licensing examination is administered by a private company, the cooperative personnel services (CPS).

Question #16 for the Board: *How much does the Board pay CPS per examination cycle? Does the Board believe that they could save money by administering the examination themselves? How does the Board ensure quality control? How does the Board ensure the anonymity of the test taker?*

Background: Due to past problems with the development and administration of the exam, the Board was legislatively required to contract with an independent consultant to perform these functions. That law sunsetted last year. The last time the Board was reviewed, the Joint Committee recommended that the requirement that the Board contract with an independent consultant be retained. The OER develops the exam and it is administered by the Cooperative Personnel Services.

ISSUE #17: The last time the Board was reviewed, the Joint Committee Recommended that the Board should continue evaluating the National Examination, given the time, effort and cost involved in providing the Board examination.

Question #17: *Can the Board provide the details of their evaluation?*

Background: The last time the Board was reviewed, the Joint Committee recommended that the Board examination should be retained but that the Board should continue evaluating the national examination (administered by the National Certification Commission for Acupuncture and Oriental Medicine), given the time, effort and cost involved in providing the Board examination.

In the Board's current report to the Joint Committee, the Board states that the national examination is actually a "certification" examination, in which an applicant can take the examination prior to graduation from their educational program. According to the Board, their position and that of the Office of Examination Resources is that a certification examination serves a different purpose than a state licensing examination. The Board states that statistically, the California written licensing examination is performing at its highest level since the start of the examination process. The pass rate varies between 50-65%. California was one of the first states in this country to regulate and license acupuncturists. According to the Board, California has licensed more acupuncture and Oriental medicine practitioners (6,809 active licensees through FY 2000/01) than the rest of the states combined. California remains a leader in the United States to establish and set standards, therefore, the Board feels that California should retain its acupuncture licensing examination.

It is unclear whether the Board evaluated the pros and cons of accepting the national exam instead of administering their own.

ISSUE #18: Should an applicant that fails the examination after three attempts, be required to complete additional education before they can sit for the exam?

Question #18 for the Board: *Why is the Board proposing the adoption of this proposal? Why 50 hours? Will the Board provide more information on the coursework? On average, how much will it cost and how long will it take for an individual to complete 50 hours? Does the Board feel that there is a connection between pass/fail rates and particular schools?*

Background: In their current report to the Joint Committee, the Board is proposing to add a new provision (Section 4938.2) to the Act. As proposed, this Section would read as follows: Notwithstanding Section 135, an applicant who fails to pass the examination required by Section 4938(b) after three attempts shall not be eligible for further reexamination until the applicant has successfully completed 50 hours of education in the subject of acupuncture and Oriental medicine. The coursework shall be provided by an approved school or continuing education provider approved by the Board. The coursework shall be required once for every three unsuccessful examination attempts. When the applicant applies for reexamination, he or she shall furnish proof satisfactory to the Board that he or she has successfully completed the requirements of this section.

The Board indicates that this proposed language was taken from the Dental Practice Act. The Board states they have had numerous applicants retake the licensing examination and that historically, if an applicant does not pass within two attempts, the number of applicants that do pass decreases steadily with each successive attempt and that the majority never pass.

CONTINUING EDUCATION ISSUES

ISSUE #19: It is unclear whether the Board uses their authority to audit licensees to ensure compliance with the continuing education requirements.

Question #19 for the Board: *Does the Board audit their licensees to ensure compliance with the continuing education requirements? If so, what is the extent and frequency?*

Background: Business and Professions Code Section 4945(a) authorizes the Board to establish standards for continuing education for acupuncturists. Business and Professions Code Section 4945(b) requires an acupuncturist to complete 30 hours of continuing education every two years as a condition for renewal of his or her license. Title 16, California Code of Regulations, Section 1399.489 (b), requires each acupuncturist, at the time of license renewal, to sign a statement under penalty of perjury that he or she has or has not complied with the continuing education requirements. Title 16, California Code of Regulations, Section 1399.489 (c), authorizes the Board to audit, once each year, a random sample of acupuncturists who have reported compliance with the continuing education requirement.

It is unclear, from either the Board's current report to the Joint Committee or the Board's website, whether the Board utilizes its audit authority.

ISSUE #20: The Board has authorized licensees to complete up to 50% of their continuing education requirements on an independent or home study basis.

Question #20 for the Board: *Can the Board explain why they did this? How do they ensure the effectiveness and quality of the course? How do they ensure licensee compliance?*

Background: Licensees are required to complete 30 hours of continuing education every two years to be eligible for renewal. Business and Professions Code Section 4945 requires providers of continuing education to apply to the Board for approval to offer continuing education courses. As part of their application, the course providers must provide the following information on their application: (1) course content; (2) test criteria; (3) hours of continuing education credit requested for the course; (4) experience and training of instructors; and (5) that interpreters or bilingual instruction will be made available, when necessary.

Title 16, California Code of Regulations, Section 1399.483 (a), provides that only an approved provider may obtain approval to offer continuing education courses. Title 16, California Code of Regulations, Section 1399.483 (c), states that each course shall include a method by which the course participants evaluate the following: (1) the extent to which the course met its stated objectives; (2) the adequacy of the instructor's knowledge of the course subject; (3) the utilization of appropriate teaching methods; and (4) the applicability or usefulness of the course information.

Effective January 30, 2000, the Board's regulations (Section 1399.483(d) of Title 16) were amended to allow licensed acupuncturists to take up to 50% of the continuing education hours required in a non-classroom setting. According to the Board's report, non-classroom setting may include audio, visual, internet, etc.

It is unclear how the Board ensures that the non-classroom continuing education courses comply with their regulations. Also, it should be noted that allowing licensees to take up to 50% of the continuing education hours required in a non-classroom setting appears to be unique to this Board.

ISSUE #21: The last time the board was reviewed, the Joint Committee recommended that consideration should be given to limiting the Board's authority to grant two-year waivers of the 30-hour continuing education prerequisite for license renewals.

Question #21 for the Board: *Has the Board modified or clarified their waiver requirements/standards?*

Background: Business and Professions Code Section 4945(e) provides that if the Board determines that any acupuncturist has not obtained the required number of hours of continuing education, it may renew the acupuncturist's license and require that the deficient hours of continuing education be made up during the following renewal period in addition to the current continuing education required for that period. If any acupuncturist fails to make up the deficient hours and complete the current requirement of hours of continuing education during the

subsequent renewal period, then his or her license to practice acupuncture shall not be renewed until all the required hours are completed and documented to the Board.

The last time the Board was reviewed the Joint Committee recommended that consideration should be given to limiting the Board's authority to grant two-year waivers of the 30-hour continuing education prerequisite for license renewals. The Joint Committee suggested that waivers should only include circumstances of dire need or circumstances beyond the control of the licensee.

In their current report to the Joint Committee, the Board indicates that to request a waiver, the licensee must submit a written request defining the need to do so. This waiver is usually extended to those licensees who provide adequate evidence to justify their inability to comply. It has been the policy of the Board to approve a licensee only one waiver. If a licensee fails to make up the deficient hours and complete the current requirement of CE hours during the subsequent renewal period, the license will not be renewed until all the required hours are completed and documented.

It appears that the Board has not limited the instances in which a waiver can be granted.

CONSUMER AND LICENSEES OUTREACH ISSUES

ISSUE #22: One of the major changes the Board has made since their last review is that they have completed and mailed a consumer brochure. It is unclear who received/is receiving this brochure.

Question #22 for the Board: *Was the brochure mailed to licensees? Are the licensees required to provide the brochure to patients? Are these brochures provided in various languages? Will the brochure be posted on the Board's website?*

Background: In their current report to the Joint Committee, the Board states that since their last review they have made a number of changes to improve overall effectiveness and efficiency and respond to concerns and recommendations raised by the Joint Committee. The Board has implemented several major changes since the last reporting period. The focus has been on raising educational standards, strengthening the enforcement program, modifying the licensing examination, developing the Board's website and license verification, and producing a consumer brochure. Neither the Board's current report to Joint Committee nor their website provides further information on this brochure. It appears as though this brochure should be, at minimum, posted on the Board's website.

ISSUE #23: The last time the Board was reviewed, their report indicated that they notify licensees regarding changes in laws or other important information through renewal notices and their points of interest newsletter. It is unclear whether the Board still has a newsletter.

Question #23 for the Board: *Does the Board still compile and distribute a newsletter? If so, why isn't it posted on the Board's website?*

Background: In their last report to the Joint Committee, the Board indicated that they notify licensees regarding changes in laws or other important information through renewal notices and in their Points of Interest newsletter. The Board's current report to the Joint Committee makes no mention of such a newsletter and there is no evidence of such a newsletter on the Board's website. The Board should at least provide this type of information to their licensees in the renewal notices and on the Board's website.

ISSUE #24: The last time the Board was reviewed, their report indicated that they provide applicants with a preparation guide for the examination. It is unclear whether the Board still does this.

Question #24 for the Board: *Does the Board provide applicants with an examination study guide? If so, why isn't it posted on the Board's website?*

Background: In their last report to the Joint Committee, the Board indicated that they provide applicants a preparation guide for the examination. The Board's current report to the Joint Committee makes no mention of a preparation guide and there is no evidence of a preparation guide on the Board's website. The Board should mail this guide to all applicants and should post it on their website.

BOARD ENFORCEMENT ISSUES

ISSUE #25: The last time the Board was reviewed they were proposing to increase the penalty for unlicensed practice that results in serious patient harm, injury or death, to a felony rather than a misdemeanor. The status of this proposal is unclear.

Question #25 for the Board: *Can the Board provide the status of their proposal?*

Background: Section 4935(a) of the Business and Professions Code provides that any person who practices acupuncture or holds himself or herself out as practicing or engaging in the practice of acupuncture, unless he or she possesses a current and valid acupuncturist's license, is guilty of a misdemeanor. Section 4935(b) of the Business and Professions Code provides that notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

The Board's current report to the Joint Committee states that they have proposed increasing the penalty for unlicensed practice that results in serious patient harm, injury or death, to a felony rather than a misdemeanor. The Board believes that such a penalty is an inadequate deterrent to unlicensed practice. The Board recommends including a felony provision in the acupuncture

laws to provide more explicit and meaningful enforcement authority for district attorneys and local law enforcement. Allied health and healing arts and medical laws currently contain standard felony violation language. The acupuncture laws should be consistent with these health care standards.

However, one legislative proposal adopted by the Board, that they have included in their current report, is a modification to Business and Professions Code Section 4935(a) to read it is a misdemeanor, punishable by a fine of not less than \$100 and not more than \$2,500, or imprisonment in the county jail not exceeding 1 year, or by both that fine and imprisonment for any person who does not hold a current and valid license to practice under this chapter....

If the Board feels that a misdemeanor is an insufficient penalty why doesn't their proposed amendment to the Business and Professions Code Section 4935(a) replace misdemeanor with felony?

ISSUE #26: Neither the Board nor their licensees are subject to the professional reporting laws (Section 800 et seq. of the Business and Professions Code).

Question #26 for the Board: *Does the Board know of any reason why they should not be subject to the reporting laws? Any reason why their licensees should not be subject to the professional reporting laws?*

Background: It appears as if any consumer who inquires about an acupuncturist is only told:

- If a person is licensed as an acupuncturists in California and their license number.
- The date an acupuncturist's license was issued, and the date it will expire if not renewed.
- The status of an acupuncturists license, e.g., renewed/current, cancelled, revoked, etc.
- If there has been a proposed or disciplinary action against an acupuncturist.

Consumers cannot find out about the following information because the law currently does not require that it be reported to the Board as it does for other health care professions:

- If an acupuncturist has been convicted of a felony.
- Malpractice judgements or arbitration awards.
- Any hospital disciplinary actions that resulted in the termination or revocation of an acupuncturists hospital staff privileges for a medical disciplinary cause or reason.

While some of this information may have been voluntarily supplied to the Board, without legal requirements to release it, the Board is unable to inform consumers. More importantly, this information would allow the Board to determine if disciplinary action is needed so it can better fulfill its mandate to protect consumers.

ISSUE #27: Are "Assistants" being used by licensed acupuncturists to perform activities that could be considered engaging in the practice of acupuncture?

Question #27 for the Board: *Is the Board aware of the use of assistants by acupuncturists and has the Board taken any action regarding these activities?*

Background: It appears that at the February 27, 2001, Board meeting, the Attorney General's Office gave an overview on the cost and the health issues involved with the unlawful use of licenses. Additionally, the Board apparently expressed concerns regarding language limiting and naming the positions an acupuncturist can hire.

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

ISSUE #28: Is the Board utilizing Internet capabilities to improve services and provide better information to consumers and licensees?

Question #28 for the Board: *What has the Board done to enhance its Internet capabilities? What other improvements does the Board expect to make?*

4.

FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

The Following Recommendations were Adopted by the Joint Legislative Sunset Review Committee on May 1, 2002 by a Vote of 5 to 0:

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION AND THE EXISTENCE OF THE BOARD?) Should the licensing and regulation of acupuncturists be continued, and the profession be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: *The Joint Committee and the Department recommend to continue regulation of the profession by the Board and review the Board again in two years.*

Comments: Continued regulation of the practice of acupuncture is necessary, given the direct patient care performed by acupuncturists. Acupuncturists diagnose, administer treatment, and prescribe various treatments and herbs to promote patient health. Consumers rely upon the licensing process to ensure that acupuncturists are properly trained and competent to provide care.

The Acupuncture Board should be continued as the entity responsible for regulation of acupuncturists; however, the Department concurs with the Joint Committee's preliminary recommendation that the Board be reviewed again in two years. This limited sunset review cycle would permit the Joint Committee and the Department to have increased oversight of the Board's efforts to remedy problems identified in this sunset review cycle.

ISSUE #2. (CHANGE BOARD COMPOSITION?) The Board does not have a faculty member appointee.

Recommendation #2: *The Joint Committee and the Department recommend that one Board member be on the faculty of a California acupuncture school.*

Comments: The Department concurs with the Joint Committee’s preliminary recommendation that Business and Professions Code Section 4929 should be amended to require that one of the licensee members shall be a member of the faculty of a California Acupuncture School. The Board’s evaluation of acupuncture schools and curriculum would be enhanced by the expertise contributed by a faculty member.

ISSUE #3: (HOW MANY MEMBERS OF THE BOARD SHOULD CONSTITUTE A QUORUM?) The law provides that a majority of the appointed members of the Board shall constitute a quorum.

Recommendation #3: *The Joint Committee and the Department recommend five members of the Board should constitute a quorum.*

Comments: The Department concurs with the Joint Committee’s preliminary recommendation that Business and Professions Code Section 4933 (c) should be amended to require that five members of the Board constitute a quorum for the transaction of business at any meeting. The current requirement that a majority of the appointed members of the Board shall constitute a quorum to conduct business is consistent with the policy of other regulatory boards within the Department.

ISSUE #4. (MAINTAIN THE CURRENT NAME OF THE BOARD?) The Board supports a name change to the “California Board of Acupuncture and Oriental Medicine,” stating that acupuncture is one modality within the whole practice and philosophy of Oriental medicine.

Recommendation #4: *The Joint Committee and the Department recommend that the current name of the Board be maintained.*

Comments: The Department is not inclined to support suggestions that the Board name be changed. In our view, changing the name of the Board to the “California Board of Acupuncture and Oriental Medicine” is likely to confuse and mislead consumers. Currently, the Board does not issue licenses solely for practitioners of oriental medicine, nor does it exercise separate enforcement authority over that aspect of the practice. Additionally, the practice of “oriental medicine” is not defined specifically in the statute and is not a licensed profession separate and removed from acupuncture. Consequently, the proposed name change is premature. The Board should not change its name until such time as a profession of Oriental Medicine is defined in statute, and the Board’s authority to regulate and enforce the conduct of such practice is clear.

ISSUE #5. (MAXIMIZE USE OF THE INTERNET?) Is the Board utilizing Internet capabilities to improve services and provide better information to consumers and licensees?

Recommendation #5: *The Joint Committee and the Department recommend that all Board reports, newsletters and brochures should be available on the Board's website.*

Comments: To facilitate dissemination of information to Board licensees and the general public, the Board should post all reports, including the Board's annual report to the Legislature, on its web page. Additionally, the Board's newsletter and informational brochures should also be available on-line.

ISSUE #6. (CONTINUE TO CONTRACT OUT EXAM ADMINISTRATION?) The licensing examination is administered by a private company, the cooperative personnel services (CPS).

Recommendation #6: *The Joint Committee and the Department recommend that the Board continue to contract out exam administration to an independent consultant.*

Comments: Due to the Board's historical problems with development and administration of the licensing exam, the requirement that the Board contract with an independent consultant for exam administration should be reinstated.

ISSUE #7. (SHOULD ADDITIONAL COURSEWORK BE REQUIRED OF AN APPLICANT WHO FAILS THE EXAM?) The Board is proposing the adoption of legislation that would require an applicant who fails the examination after three attempts to complete additional education before they can sit for the exam.

Recommendation #7: *The Joint Committee and the Department recommend that additional coursework should not be required of applicants who fail the exam.*

Comments: Applicants should be permitted to continue to sit for the examination, even after failed attempts, without being required to sit for additional coursework or continuing education. It is up to the applicant to pursue supplementary education needed for passage of the examination. As long as applicants meet the educational requirements and pay the fee to sit for the examination, they should be allowed to continue to take the exam, as many times as necessary.

ISSUE #8. (SUBJECT ACUPUNCTURISTS TO THE PROFESSIONAL REPORTING LAWS?) Unlike most health boards and health care licensees, neither the Board nor their licensees are subject to the professional reporting laws (Section 800 et seq. of the Business and Professions Code).

Recommendation #8: *The Joint Committee and the Department recommend that acupuncturists should be subject to professional reporting laws.*

Comments: The Department concurs with the Joint Committee’s preliminary recommendation. Like other health care professionals licensed in California, acupuncturists should be subject to professional reporting laws (Section 800 of the Business and Professions Code).

ISSUE #9. (FURTHER STUDY NEEDED TO DETERMINE EDUCATIONAL STANDARDS AND SCOPE OF PRACTICE?) The Board appears to be proposing to increase the education requirement for the practice of acupuncture and oriental medicine. The Board is proposing to change the law so that acupuncturists can diagnose within the scope of their practice.

Recommendation #9: *The Joint Committee and the Department recommend that further study of the profession by an independent consultant is needed to determine educational requirements and scope of practice.*

Comments: There is much debate within the acupuncture profession surrounding the level of education that is needed for acupuncturists to practice effectively, and the scope of practice which determines exactly what tasks they may or may not perform. The Board has acknowledged this debate by establishing the Task Force on Competencies and Outcomes.

The Department concurs with the Joint Committee’s preliminary recommendation that the scope of practice for acupuncturists needs to be clarified and codified in statute.

To resolve this debate, the Department recommends an independent consultant be retained by the Department, with funding provided by the Board, to assess the educational needs of practitioners and the scope of practice of acupuncturists. As the practice of acupuncture evolves, it may be necessary to make changes to the practice act in order to reflect contemporary health care. To prepare for these changes, this independent health care consultant working with the Department should assess the practice and report to the Board, the Department, and the Joint Committee prior to the Board’s next sunset review.

ISSUE #10. (EVALUATE NATIONAL EXAMINATION?) The last time the Board was reviewed, the Joint Committee Recommended that the Board should continue evaluating the National Examination, given the time, effort and cost involved in providing the Board examination.

Recommendation #10: *The Joint Committee and the Department recommend that the national examination should be evaluated.*

Comments: The Board should evaluate the national examination, administered by the National Certification Commission for Acupuncture and Oriental Medicine, and determine whether or not the national examination should be offered in California in lieu of or as part of the state examination. To assess the scope of the national exam and its relevance to the practice in California, the Department’s Office of Educational Resources (OER) should conduct or oversee a comparative analysis of the national examination.

ISSUE #11. (INVESTIGATE THE EXTENT OF THE USE OF UNLICENSED ACUPUNCTURE ASSISTANTS?) Are “Assistants” being used by licensed acupuncturists to perform activities that could be considered engaging in the practice of acupuncture?

Recommendation #11: *The Joint Committee and the Department recommend that the use of unlicensed acupuncture assistants be investigated.*

Comments: The Board and the Joint Committee have expressed concerns about the use of unregulated, unlicensed acupuncture assistants. The Board should actively investigate whether licensees are utilizing assistants. If the Board determines that this is a common yet unregulated practice, the Board should examine the need for licensure of these assistants and return to the Joint Committee in two years with a report on the frequency of the practice and the potential need for a new licensure category.

ISSUE #12. (THE BOARD FEELS THAT EXEMPTED HEALTH PRACTITIONERS ARE A RISK TO CONSUMERS.) Under certain instances, other licensed health practitioners, such as physicians, podiatrists and dentists may also practice acupuncture.

Recommendation #12: *The Joint Committee recommends that the Board examine ways to ensure consumers are not harmed by exempted practitioners and report the results to the Committee at the next review.*

Comments: The Board feels that the 200-300 hour course in Oriental medicine often taken by an allopathic doctor, podiatrist or dentist is totally inadequate. The Board feels that proper, adequate and complete program training in Oriental medicine diagnosis is essential to ensure safe and effective acupuncture treatment.

ISSUE #13. (CHANGE THE BOARD’S CONTINUING EDUCATION PROGRAM?) Are changes needed to the Board’s continuing medical education (CE) program? It is unclear whether the Board uses their authority to audit licensees to ensure compliance with the continuing education requirements. The Board has authorized licensees to complete up to 50% of their continuing education requirements on an independent or home study basis.

Recommendation #13: *The Joint Committee recommends that the Board study ways to improve the frequency and consistency of their auditing and the quality and relevance of their courses. The Board should provide the results of its study of the CE program and make recommendations on any changes that are necessary to improve the overall quality of the program at the next review.*

Comments: Acupuncturists are required to complete 30 hours of continuing education every two years as a condition for renewal their licenses. The Board is authorized to audit, once each

year, a random sample of acupuncturists who have reported compliance with the continuing education requirement. However, the frequency and consistency of the Board's auditing and the quality and relevance of Board approved course continues to be a concern to the Joint Committee.

ISSUE #14. (EXAMINE THE BOARD'S SCHOOL APPROVAL PROCESS?) The last time the Board was reviewed, the Joint Committee concurred with the Board that the Bureau of Private Postsecondary and Vocational Education (BPPVE), or similar approval for schools outside California, should be a prerequisite for Board approval of schools.

Recommendation #14: *The Joint Committee recommends that an independent consultant examine the pros and cons of the approval process of the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM), the approval process of BPPVE, and the Board's approval process. The independent consultant should provide the results of the study and make recommendations on any changes that are necessary to improve the overall quality of the process at the next review.*

Comments: The Board continues to look at this issue without resolution. In their current report to the Joint Committee, the Board states that they have not focused on the acupuncture school approval process since the time of the last reporting, due to limited resources. However, the Board's report does state that beginning fiscal year 2000/2001, their Educational Committee commenced focusing on this issue. The Committee has held public meetings to review the application and review processes for the BPPVE, and the ACAOM. The Board is also reviewing its current school approval process, and the program's policies and regulations to determine if they are adequately defined.